



2012/13

annual report

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Mission

The mission of the OPFA is to resolve complaints in terms of the ACT in order to uphold the integrity of the pension fund industry and to protect the interests of pension fund members.

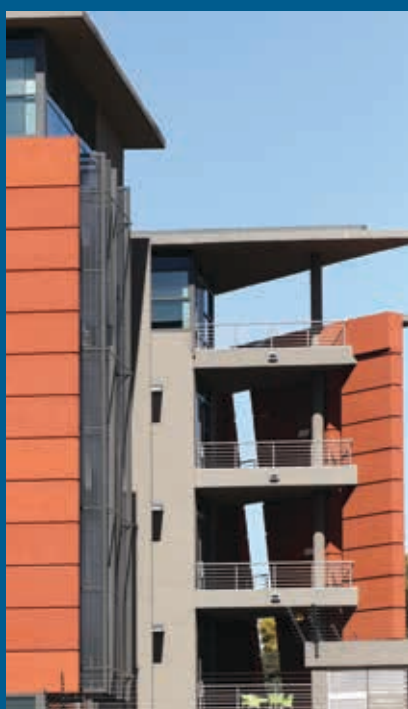
Vision

The Pension Funds Adjudicator is a specialist tribunal that aspires to be a respected institution that makes binding and final determinations in pension fund complaints submitted to it in terms of the ACT.

Mandate

The mandate of the OPFA is to ensure a procedurally fair, economical and expeditious resolution of complaints in terms of the ACT, by:

- Ensuring that its services are accessible to all;
- Investigating complaints in a procedurally fair manner;
- Reaching a just and expeditious resolution of complaints in accordance with the law;
- Are innovative and proactive in thought and in action; and
- Support, encourage and provide opportunities for individual growth.



Message from Minister of Finance

In my 2013 Budget Speech, I announced a number of retirement reforms, which seek to improve the functioning of our retirement system and promote long-term household saving. Included amongst these reforms is improved and strengthened governance over retirement funds. The shift towards a “twin peaks” system for financial regulation is a further attempt to enhance the regulatory framework and improve the financial services sector. The Office of the Pension Funds Adjudicator (OPFA) plays a critical role in the establishment of a model which will ensure that our financial system continues to feature amongst the best regulated and supervised in the world, with an enhanced focus on market conduct and consumer protection.

The OPFA came into being on 1 January 1998 to dispose of complaints lodged under the Pension Funds Act, 24 of 1956 in a procedurally fair, economical and expeditious manner. While the organisation has established itself as a critical component of the financial services industry, it has nonetheless experienced several challenges, chief amongst which has been the backlog of complaints, which can be traced as far back as 2007. I am pleased to note, however, that such backlogs have been addressed and significant progress made. Indeed, the OPFA has succeeded through the implementation of a new case management system in clearing the backlog of complaints received as far back as 2007. The resolution of complaints continues to see a marked improvement. In comparison to the 2011-2012 financial year, the New Complaints Unit resolved 22% more complaints while the Conciliation Unit and the Adjudication Unit finalised 52% and 93% more complaints respectively. A total of 8127 complaints have been dealt with in the current financial year, representing a 65% increase from the previous year.

I would like to take this opportunity to congratulate Ms Lukhaimane on her appointment as the Pension Funds Adjudicator; and to thank both her and the OPFA team for their performance this year as well as their dedication and hard work in ensuring that the complaints of members of retirement funds are duly investigated and resolved thereby ensuring post-retirement financial security.

Honourable Pravin Gordhan, MP
Minister of Finance





From the desk of the Chairman

Chairman of the Financial Services Board

Mr Abel Sithole

When Muvhango Lukhaimane commenced her duties as Deputy Pension Funds Adjudicator in June 2012, she set her sights on eliminating the backlog of cases and reducing the turnaround time for all new complaints in keeping with the focus on improving service delivery to stakeholders.

Less than a year later, I am pleased to be informed that Ms Lukhaimane has achieved her objective of discharging her mandate – to ensure a procedurally fair, economical and expeditious resolution of complaints – despite having thousands of case files going as far back as 2007.

Making this feat more remarkable is that the build-up of complaints was eradicated during the upheaval caused by the relocation of the Office of the Pension Funds Adjudicator (OPFA) from Sandton to Pretoria.

Sight must not be lost of the fact that whilst tackling the accumulation of complaints, the OPFA had to continue resolving current in-depth complaints in a methodical manner.

Much credit for the operational efficiency of the OPFA is due to the review of the complaints management process to eliminate the churning of complaints between the three departments, viz. the New Complaints Unit, Conciliation and Adjudication.

The overhauling of the complaints management system contributed in no small measure to the reduction of time-lines but also ensured that line managers assessed correspondence at the earliest possible time.

The implementation of a new interactive case management system with effect from 1 October 2012 can only further enhance efficiency, thus taking the OPFA to even greater heights as a pension dispute resolution forum.

A disturbing phenomenon pervading the OPFA during the commencement of the reporting period is that almost 60% of the total complaints were against the Private Security Sector Provident Fund (PSSPF) regarding arrear contributions, none or late payment of withdrawal benefits, the payment of death benefits and provision of benefit statements.

Whilst the number of complaints against the PSSPF had decreased to a third by 31 March 2013, Ms Lukhaimane has rightly pointed out that this situation is untenable as the PSSPF's non-compliance

with various aspects of the Pension Funds Act is overly engaging the OPFA, much to the prejudice of the pension funds industry as a whole, its members who pay levies and beneficiaries.

Also worrying is the lack of co-operation and trust between pension fund members and beneficiaries on the one hand, and administrators, pension funds and boards of trustees on the other hand. In the reporting period, 4 127 determinations were handed down, of which in 2 399 cases, relief was granted to the complainant. This clearly points to the need for fund trustees and administrators to work harder at communicating and educating members and beneficiaries about fund rules and benefits.

Towards this end, the announcement by Minister of Finance Pravin Gordhan during his 2013 Budget speech that he wanted to meet with all pension fund trustees and that government would ensure pension fund trustees receive training once they are appointed to the position, is most welcome.

The success of the OPFA is largely dependent on the quality of its most important asset – its people. Security of tenure and job satisfaction are critical factors for staff retention. The presentation of five-year long service awards to nine employees augurs well for the stability and continued growth of the OPFA.

Whilst the OPFA has operated without a Pension Funds Adjudicator, I will be failing in my duty if I did not compliment Ms Lukhaimane for stepping into the fray, engaging with all stakeholders and reviving the sound institutional framework of the OPFA so that its core work is recognised within the financial services industry and by the broader South African public.

Finally, I would like to thank the industrious team at the OPFA for executing the process of complaints handling with great dedication and commitment, thus ensuring the OPFA role will remain integral, serving as a crucial line of defence for those who have been victims of unscrupulous and unprofessional practices within the pension funds industry. My best wishes for its continued success.

Abel Sithole
Chairman of the FSB



Operational report

Deputy Pension Funds Adjudicator

Muvhango Lukhaimane

“The high number of complaints resolved through determinations points to a lack of cooperation and trust between pension fund members and beneficiaries on the one hand, and administrators, pension funds and boards of trustees on the other.”

The mandate of the Office of the Pension Funds Adjudicator (OPFA) is to ensure a procedurally fair, economical and expeditious resolution of complaints in terms of the Pension Funds Act.

However, as the performance year 2012 – 2013 got underway, it was clear that our inability to finalise complaints expeditiously was having a negative effect on the ability of complainants and all other stakeholders to view the complaints' resolution process as procedurally fair and economical.

As stated by the Chairperson of the Financial Services Board, Mr Abel Sithole, in his message in the OPFA's Annual Report for 2011 – 2012, "Justice delayed is justice denied".

At the same time, we had to prepare the entire office for relocation from our Sandton offices to Pretoria, in terms of a decision taken the year before. This was a process that had to be undertaken with due care and consideration as it involved ensuring that the procurement processes for the new offices and services were done in terms of the applicable procurement procedures.

However, it was also an opportunity for the OPFA to contribute to social development as we were able to donate our old furniture to the Department of Education for use in the educational advancement of the nation's children.

The relocation will also result in reduced rental and other future operating costs, thereby ensuring that the budget is spent towards the core mandate of the OPFA, which is the resolution of complaints.

It was a great challenge to keep the staff committed to meet the strategic objectives of the organisation whilst they faced a major upheaval in terms of their working lives during the move to Pretoria.

In the end, with the assistance of the Financial Services Board and the Ministry of Finance in planning, monitoring and executing our strategies, we were able to meet our strategic objectives and also relocate to our new premises with minimal disruption.



MANCO from left to right: (Standing) Christian Seabela, Muvhango Lukhaimane, Richard Segers, Pumeza Ngxiki (Seated) Tshepo Dooka-Rampedi, Charlson Raphadana

Case management

In order to achieve our strategic objective of disposing of complaints in a procedurally fair, economical and expeditious manner, the complaints management process was reviewed to eliminate the churning of complaints between the three departments, ie the New Complaints Unit, Conciliation and Adjudication.

The review process did not only consider reducing time-lines but also ensured that line managers assessed correspondence at the earliest possible time.

A new case management system, customised to the OPFA's needs, was implemented with effect from 1 October 2012. This is a more interactive case management system that has automated a considerable amount of administrative processes, whilst improving the reporting function.

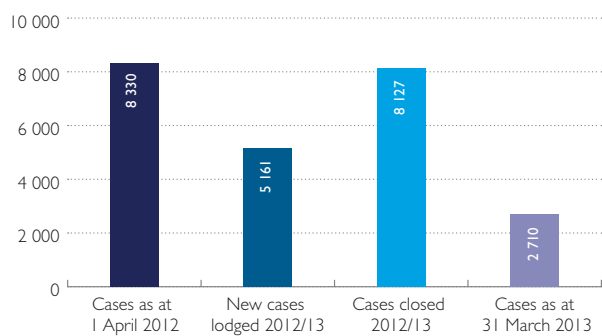
Case activity

At the commencement of the reporting period, ie 1 April 2012, the OPFA had 8 330 complaints as open on its two case management systems.

A considerable amount of time was spent establishing which of these complaints were resolved but not properly closed on the system and which complaints were still to be resolved.

The difference in the graphs below indicates that as at 31 March 2012, a considerable number of complaints, although finalised, were not properly closed and, therefore, were reflected as outstanding complaints. These complaints were closed administratively and are thus not reflected in the complaints that were closed in the current period.

Case activity



During the year, 5 161 new complaints were received by the OPFA. This represented a reduction of approximately four percent from the previous year. In this financial year, 8 127 complaints were disposed of, representing an increase of 65% from the previous year.

The OPFA was unable to enforce section 30A of the Act, requiring that a complainant should first attempt to lodge a written complaint with the fund and give the fund 30 days to respond in writing.

This was largely due to the fact that most funds that were subject to complaints did not have their records in order, more especially with regard to membership and contribution details. This situation continues to prevail and hampers the ability of the OPFA to discharge its mandate.

It, therefore, becomes difficult to insist that complainants who are lodging complaints against a particular fund, where the OPFA is already aware of an existing record-keeping and compliance problem, to first approach the fund for a written response as this would not be given.

It is also not ideal for the OPFA to be issuing default determinations; ie orders against respondents who do not bother to lodge a response to a complaint despite numerous requests to do so. It is a statutory requirement that parties need to respond when requested to do so by the OPFA and, therefore, non-compliance is a contravention of the Act.

However, we cannot grant parties, especially funds, employers and administrators, countless opportunities to respond as this defeats the purpose of having a tribunal of this nature.

Resolution of complaints

In order to resolve the backlog of complaints, the resolution of complaints at adjudication stage continued to be allocated to two separate teams with specific objectives.

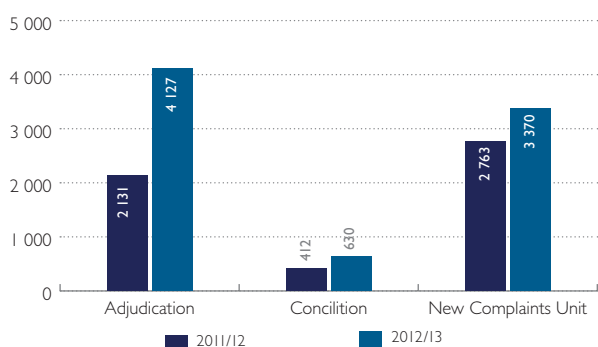
Within these two teams, complaints against the Private Security Sector Provident Fund (PSSPF) were managed separately.

At the commencement of the reporting period, complaints lodged with the OPFA against the PSSPF represented almost 60% of the total complaints within the office. These complaints mostly concerned arrear contributions, late or non-payment of withdrawal benefits, the payment of death benefits and provision of benefit statements.

As at 31 March 2013, complaints against the PSSPF fund represented approximately a third of the complaints in the OPFA. This situation is clearly untenable as the OPFA is sustained by levies from members of all pension funds that are registered under the Act, and it is, therefore, unacceptable that a regulatory and compliance failure by the fund and its administrator is preventing the OPFA from engaging in other value adding activities for the benefit of the pension funds industry, its members and beneficiaries as a whole.

During this reporting period, 4 127 determinations were handed down. In 2 399 of these determinations, relief was granted to the complainant.

Complaints resolution



The high number of complaints resolved through determinations points to a lack of cooperation and trust between pension fund members and beneficiaries on the one hand, and administrators, pension funds and boards of trustees on the other.

Often members and beneficiaries are not willing to accept an explanation from a fund or an administrator because they would be hearing that explanation for the first time when the fund or administrator is responding to a request from the OPFA and not when the member approached them.

Whilst I appreciate the efforts of funds and administrators to communicate and educate members and beneficiaries about fund rules and benefits, this is clearly not enough.

It is hoped that funds and administrators are abiding by these determinations, and going forward, the office would want to look into a way of ensuring that orders are complied with. A total of 23 appeals were lodged against determinations in terms of section 30P of the Act.

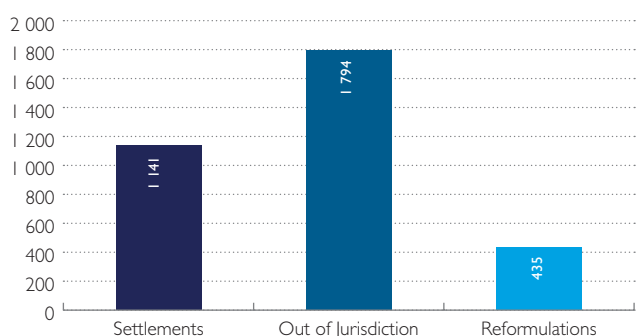
Conciliation continues to be of great assistance in resolving complaints. In this period, 630 complaints were finalised, mostly through settlements. This reflects an increase of 35% from the previous financial year. The conciliation service proved to be invaluable, especially in finalising complex matters lodged over three years ago with this office.

Compared to the 2011 – 2012 financial year, the New Complaints Unit resolved 22% more complaints, whilst the Conciliation Unit resolved 52% more complaints and the Adjudication Unit finalised 93% more complaints through determinations.

The increase in the Adjudication Unit's determinations was despite the fact that as part of improving the OPFA's processes, from 1 October 2012 complaints that were settled could no longer be finalised through determinations, but were referred back to the New Complaints Unit for finalisation, thereby resorting to a formal determination only where disagreements remained. These figures represent a 65% increase in the disposal of complaints from the 2011 – 2012 financial year.

Of the 3 370 complaints resolved by the New Complaints Unit, 1 141 were settlements, whilst the remaining 2 229 were either reformulations or matters out of the OPFA's jurisdiction.

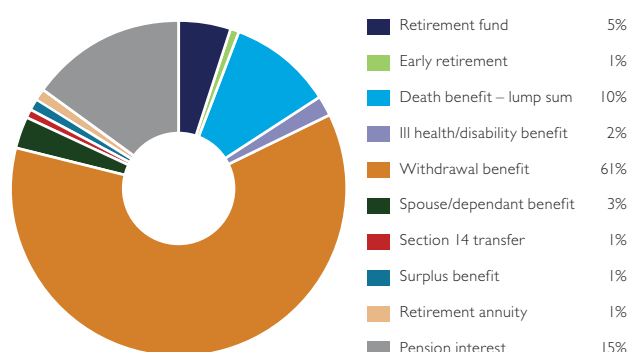
Complaints finalised in the New Complaints Unit



During the year under review, various interventions were effected to improve the narrative in our determinations with the Adjudication Unit and improve on our standard correspondence from the New Complaints Unit.

In the case of determinations, the exercise was intended more to improve the understanding of our orders whilst with the standard correspondence, it was more to direct the parties to a complaint to provide the OPFA with adequate and relevant information as early as possible.

Nature of benefit on complaints closed



Nature of benefit on complaints closed

Overall, what can be gleaned from the nature of benefits dealt with in the complaints received is the relative passive manner with which employers seem to be approaching occupational funds.

After all, this is offered as part of the remuneration package of employees and, therefore, at the very least, employers owe their employees a duty of good faith to ensure that they not only contribute to a pension fund but also take interest in the manner in which the fund is managed for the benefit of their employees. Unfortunately, union and bargaining council-managed pension funds do not fair better on this score either.

The number of complaints that concern causal event charges imposed by long-term insurers when retirement annuity members make their policies paid up or wish to transfer same to other service providers continues to be of concern as it points to the relative poor communication that retirement annuities and long-term insurers have in this respect.

It is, therefore, hoped that the Treating Customers Fairly initiative will to a large extent eradicate this.

The inability of trustees to discharge their duties in terms of section 37C of the Act when distributing a death benefit continues to occupy a considerable amount of time.

Often the investigation takes much longer than 12 months to complete for no apparent reason.

In a society like South Africa where the death of a breadwinner has the potential to plunge a number of dependants into abject poverty that may be irreversible, trustees need to ensure that they put processes and procedures in place that make their duties in terms of section 37C of the Act easier to discharge.

Members also bear a responsibility to their loved ones to provide as much updated information as possible regarding potential beneficiaries in case of their demise.

Call-in enquiries

A total of 17 853 call-in enquiries were handled as compared to 17 143 enquiries for the 2011 – 2012 financial year. Although the OPFA belongs to the centralised complaints helpline for all Financial Ombud Schemes, it is heartening to note that complainants manage to come through to us directly, whilst the centralised complaints helpline redirects a negligible number of complaints.

This may be attributed to the OPFA's share of media and the efforts by pension funds and administrators to highlight the presence of the OPFA with members and beneficiaries.

Walk-in complaints

During the period under review, 1 386 walk-in complaints were received, representing 27% of the total complaints received.

In the previous period, we used to record statistics under this category to include existing complainants that came to the office to enquire about progress on their matters and those that came with the intention of lodging a complaint but did not. The 1 386 represents the number of complaints that were lodged by complainants that actually visited our office.

Following the relocation of the office with effect from 1 March 2013, we will continue to monitor this statistic in order to assess our efforts at making the office accessible to potential complainants.

Stakeholder outreach and interaction

Whilst the office regards its interaction with stakeholders as integral to the discharge of its mandate, our efforts this year were more by invitation and in most instances to facilitate the resolution of complaints.

With regards to the latter, presentations were made to administrators of SALT Employee Benefits (Road Freight Industry Provident Fund), Absa Consultants and Actuaries (PSSPF), Municipal Councillors' Pension Fund; whilst meetings were held with PSSPF, Bosele National Provident Fund, Mineworkers Provident Fund, Old Mutual Superfund Provident Fund and AON Fund Administrators.

The deputy Pension Funds Adjudicator addressed the following seminars on developments in the office and the latest trends as far as determinations were concerned: Pension Lawyers Association (Durban, Cape Town and Johannesburg) and Principal Officers Association (Johannesburg and Port Elizabeth).

Senior Assistant Adjudicator, Ms Tshepo Dooka, presented a paper at the Unisa Pension Law Certificate Seminar and represented the deputy Pension Funds Adjudicator at the IRF Conference where she delivered a paper on the latter's behalf.

Senior Assistant Adjudicators Mr Makhado Ramabulana, Ms Zareena Camroodien and Mr Silas Mothupi presented papers



From left to right: Richard Segers, Angie Mojakisane, Wonder Dila, Mamonyooe Ramahlele



From left to right: Boitumelo Leduma, Pumeza Ngxiki

at the Financial Planning Institute Seminars (Durban, Cape Town and Johannesburg).

The office participates in the National Consumer Financial Education Committee convened by National Treasury where among others the financial education strategy and the Treating Customers Fairly initiative are discussed.

Our share of media in terms of determinations of note that were issued and responses to requests for comment was satisfactory.

A stakeholder survey report with recommendations on our interaction with all our stakeholders was finalised. These recommendations will be implemented in the following financial year. In this regard, we would like to extend our sincere gratitude to the funds, administrators, industry bodies, members and beneficiaries that participated in the survey. Your input has been valuable and will help improve the general functioning of the office and the complaints resolution process.

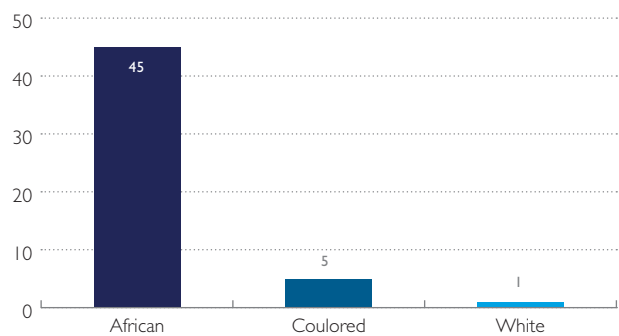
Human resources

The OPFA is heavily reliant on its human resources capacity to deliver on its mandate. Therefore, the fact that nine employees received five-year long service awards reflects a semblance of stability that can only augur well for the delivery of our mandate. The OPFA will, therefore, continue to strive to provide a preferred employer climate and comply with employment equity requirements.

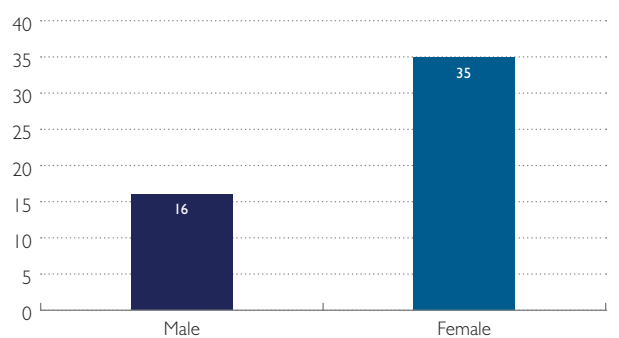
As at 1 April 2012, the OPFA had a total staff complement of 46 employees. Eight employees terminated their service with the OPFA during the period under review, whilst 13 new employees joined the office.

As at 31 March 2013, the staff complement was 51. The demographics are illustrated in the following graphs in line with employment equity designations:

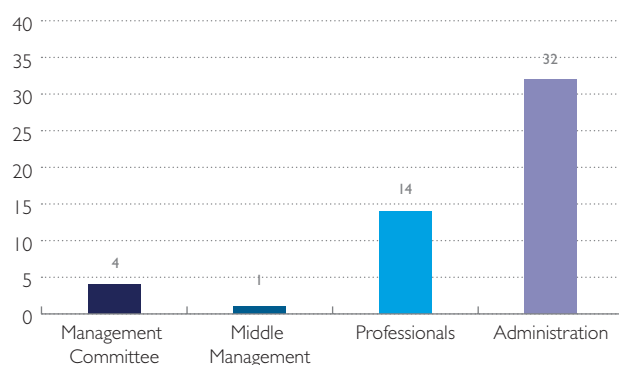
Racial composition as at March 2013



Gender profile as at 31 March 2013



Structural composition as at 31 March 2013





From left to right: Gomotsegang Magaseng, Jacky Tshabalala, Lorinda Crous, Tintswalo Shibambu



From left to right: Carmen Kotshoba, Nthabiseng Maleka, Thuli Mogwale

For the period under review, staff participated in various training intervention programmes aimed at enhancing their skills. Training interventions included an in-house training on early resolution of complaints, computer skills and time management. A Senior Assistant Adjudicator was enrolled for the International Executive Development Diploma with the University of the Witwatersrand.

Note of appreciation

I would like to extend my sincere appreciation to the Minister of Finance and the FSB Board for granting me the opportunity to serve.

Their continued interest in the affairs of the OPFA and sustained support has been most encouraging.

Whilst this has been a daunting task, the objectives of the office would not have been met to this extent had it not been for the cooperation of staff members, OPFA management, conciliators, funds administrators, fund members and beneficiaries alike.

I would also like to thank the Pension Lawyer's Association, the Financial Planning Institute, the Principal Officer's Association and the Institute of Retirement Funds for their cooperation and support.

Last but not least, my sincere thanks to the media, especially Personal Finance, Moneyweb and the Sowetan's Consumer Line for highlighting our notable determinations throughout the year.

Muvhango Lukhaimane
Deputy Pension Funds Adjudicator

Summary of important determinations

Introduction

One of the advantages of a specialist tribunal such as the Office of the Pension Funds Adjudicator (OPFA) is that parties can rest assured that there is a repository of specialist pensions law knowledge that understands the nuances of the retirement funds industry.

It is this knowledge that enables the tribunal to resolve disputes in an expeditious and economical manner, whilst at the same time adhering to the rule of law.

Below follows a selection of matters that settled important areas of the law around pension funds administration during the year under review.

NON-PAYMENT OF DEATH BENEFIT

A Mdaka (Estate Late MF Mabunda) v Municipal Employees Pension Fund and Akani Retirement Fund Administrators (Pty) Ltd (PFA/GA/12958/2012/ZC)

The complainant, aged 32 years, was the daughter of the deceased, Mr FM Mabunda, who passed away on 24 September 2007. She lodged the complaint on behalf of herself and her six siblings.

The deceased was employed by the Bushbuckridge Municipality from 1 July 2007 until his death.

He was a member of the first respondent by virtue of his employment.

Upon his death, a death benefit became payable to his beneficiaries in terms of section 37C of the Act.

The complainant was dissatisfied with the non-payment of the death benefit by the first respondent. She submitted that after the deceased's death, she and her siblings had a dispute with his girlfriend, one Ms EB Silaule, as to who would inherit his estate.

She contacted the offices of the second respondent but was advised that the death benefit application forms may only be submitted once she obtained a letter of authority.

The complainant approached the North Gauteng High Court in 2007 to contest Ms Silaule's appointment as the executrix of the estate. On 9 February 2011, the matter was resolved and the complainant was appointed executrix of the estate.

In May 2011, the complainant submitted the death benefit claim application forms together with the supporting documentation to the second respondent but no death benefit was paid.

After numerous follow-ups she was advised that the re-insurer repudiated the claim and that she would only receive the deceased's contribution payments.

The complainant said the majority of the deceased's dependants were students who needed financial support.

When asked by the OPFA to respond, no responses were received from the respondents.

The deputy Pension Funds Adjudicator (PFA) said the Pension Funds Act precluded this Tribunal from investigating and adjudicating any complaint if the act or omission to which it related occurred more than three years prior to receipt of a written complaint.

However, prescription did not commence running against a minor until such time as the minor attained the age of majority. Three of the dependants in this matter were minors.

In her determination, the deputy PFA said where there was a delay in the payment of a death benefit, such a delay must be reasonable and justifiable. Because the respondents had omitted to file responses to the complaint, no reasons were advanced for the non-payment or delay in the payment of the death benefit.

The Tribunal found that the delay in the payment of the death benefit was unreasonable and unjustifiable. A prima facie case had been made out that the first respondent has failed to pay the benefit within a reasonable period of time.

She ordered the first respondent to pay the death benefit to the deceased's dependants together with interest calculated at the rate of 15,5% per annum from 24 September 2008 to the date of payment.

QUANTUM OF PENSION INTEREST PAYABLE

SM Bowyer V Personal Portfolio Preservation Provident Fund and Glacier Financial Solutions (Pty) Ltd/Sanlam Employees Benefits (PFA/GA/7714/2011/TN)

The complainant was the former spouse of Mr DP Bowyer, a member of the first respondent. The second respondent was the first respondent's administrator.



From left to right: Philda Mphephu, Makhado Ramabulana, Tshepo Nawane

The marriage between the complainant and the member was dissolved on 16 August 2006 by the High Court (Witwatersrand Local Division) in Johannesburg.

In terms of the settlement agreement, the defendant would be entitled to receive 33,3% of the net value subject to any applicable legislation of the plaintiff's Momentum Wealth Preservation Provident Fund at the value of the same at the date of maturity thereof, alternatively on the date that plaintiff elects to withdraw same.

The complainant was paid an amount of R1 538 743. The first respondent calculated the total pension interest as at the date of divorce and not at the date of the non-member's spouse's election.

The complainant was dissatisfied with the quantum of the pension interest paid to her. She submitted that she was advised that she was entitled to an amount of R2 073 218. As a result there was a shortfall of R534 474.

The second respondent submitted that the divorce order was granted against Momentum. Subsequent to the complainant and the member spouse's divorce, the member spouse sent an application form to transfer his provident fund benefit from Momentum to Glacier on 9 July 2010.

On 6 October 2010, the member spouse invested his fund credit in two separate Glacier investments.

The second respondent submitted that it was advised by Momentum that the divorce order was noted on their records and provided it with a copy thereof on 18 December 2010.

The complainant's entitlement was calculated at the rate of 33,3% on the value of R4 616 692,46 at the date of divorce, which amounted to R1 538 743,59. The complainant's entitlement was calculated at the date of divorce and not the date of election.

These proceeds were withdrawn from the member spouse's portfolio and invested in two Personal Portfolio Preservation Provident Funds as requested by the complainant.

The second respondent submitted that section 37D of the Act had been amended and provided that any pension interest allocated to a non-member spouse in terms of a divorce granted before 13 September 2007 would be deemed to have accrued to the member on 13 September 2007.

This meant that the "clean break principle" applied to divorce decrees granted before 13 September 2007 and the non-member spouse concerned would, therefore, be able to elect the payment of his or her share or transfer to another fund.

It submitted that the pension interest which could be taken into account in a divorce settlement agreement could thus not be more than the benefit as at the date of divorce in respect of pension and provident funds.

In her determination, the deputy PFA said the OPFA was gravely concerned that the complainant was paid a share of pension interest by the second respondent even though the divorce order was unenforceable against Momentum Wealth Preservation Provident Fund and it was, therefore, not bound by the order.

"The settlement agreement must comply with the definition of 'pension interest' as contained in section 1 of the Divorce Act and section 37D(4) of the Act.

"In casu, the divorce order is silent about the payment of pension interest by Momentum Wealth Preservation Provident Fund, or any other fund, to the complainant.

"The second respondent should not have paid pension interest to the complainant because the order does not comply with the requirements of the Pension Funds Act.

"Therefore, without an order to the effect that a fund must pay pension interest to the complainant, it cannot be compelled to do so. The complainant did not have any recourse against the fund or respondents in this regard.

"The order was only binding between the parties, but is not enforceable against the respondents."

She said pension interest in a pension fund is the member's notional withdrawal benefit had he withdrawn from the fund on the date of the divorce. Therefore, the complainant would have been entitled to 33,3% of the member spouse's fund credit as at the date of divorce, ie 16 August 2006 had the order been valid.

The member spouse's fund credit as at the date of divorce was R4 616 692,46. The complainant appeared to believe that she was entitled to the member spouse's fund credit when it was paid out to him. This was not the case as was evident from the definition of pension interest in the Divorce Act.

She also attached a copy of the benefit statement from Momentum, dated 5 August 2010, which indicated the member spouse's fund value on this date as R6 055 589,95.

Summary of important determinations (continued)



From left to right: Silas Mthupi, Zareena Camroodien, Mfundo Daki

However, she would only have been entitled to 33,3% of the member spouse's fund credit as at the date of divorce on 16 August 2006 and not 5 August 2010.

The complaint was dismissed.

DEDUCTION OF ADMINISTRATION FEES FROM MEMBERS' FUND VALUES

Capitec Bank Limited and 2389 Others v Outsources Solutions Provident Fund and Mclubed Employee Benefits (Pty) Ltd (PFA/WE/5077/2011/LPM)

The complainants were Capitec Bank Limited and its employees. The employees were members of the first respondent. The second respondent was the first respondent's administrator.

On 1 December 2007, Capitec served the respondents with notice that, with effect from 1 March 2008, it would terminate its participation in the first respondent and transfer its employees to the Alexander Forbes Retirement Fund through a scheme of transfer in terms of section 14 of the Act.

As a result, the second respondent commenced deducting administration services fees directly from members' fund values, culminating in a total amount of R2 122 199,00 being deducted in this regard.

The complainants were dissatisfied with the deduction of fund expenses directly from employees' fund values and sought an order directing the second respondent to refund the amount of R2 122 199,00 that was deducted from employees' fund values.

They submitted that Rule 7.3 of the first respondent's rules provided for the payment of fund expenses which should be borne by the fund. Further, these expenses must be deducted from the first respondent's reserve account. Therefore, the second respondent had acted unlawfully by deducting the expenses directly from employees' fund values.

In response, the second respondent submitted that the methodology implemented in deducting the administration fees was based on a percentage deduction against each member's fund credit.

The trustees felt that this was equitable as opposed to a flat administration fee per member which would have resulted in many of the members having little or nothing left towards retirement.

The administration fee of R27,19 per member per month whilst the fund was active, was a commercial rate negotiated by Capitec with the second respondent and not the first respondent.

In her determination, the deputy PFA said a fund, its legal status, and the rights and obligations of its members and the employer, were governed by the rules of the fund, relevant legislation and the common law. The deduction of fees from employees' fund values must be sanctioned by the provisions of the rules.

The first respondent had caused the establishment of a Reserve Account in respect of Capitec, from which the costs and expenses referred (including administration costs in relation to Capitec's pension scheme) ought to be deducted.

Thus, the administration costs that were deducted from employees' fund values should not have been so deducted.

The second respondent had acted unlawfully and in contravention of the provisions of the first respondent's rules, in deducting these directly from the employees' fund values.

The second respondent's actions had resulted in the reduction of employees' benefits, in contravention of the provisions of the first respondent's rules.

In other words, it caused harm to the employees and infringed upon their interest to not have their benefits reduced unlawfully and these interests were infringed upon in contravention of the rules.

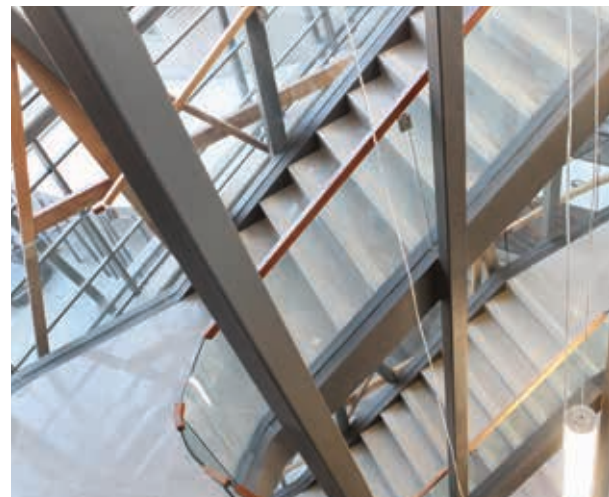
The second respondent was ordered to refund the amount of R2 122 199,00 that was deducted from employees' fund values, plus interest.

HOW MUCH INTEREST CAN BE ACCUMULATED ON A DEBT

VB Kunene v the Hospitality and General Provident Fund (PFA/GA/7528/2011/MR)

Ms VB Kunene of Lenasia, Gauteng, complained about the amount required for the repayment of a R8 250 housing loan granted to her by the Hospitality and General Provident Fund.

By December 2004, the amount had ballooned to R22 938,62 because of interest, and as the monthly contributions were lower than the interest rate, nine months later in September 2011 it was standing at R31 776,25 – and still growing.



From left to right: Thuleleni Mbhansa, Paul Mogashoa, Ayanda Mngqinya

Mrs Kunene was an employee of the Garden Court Sandton City Hotel, a member of the Southern Sun Hotel Interest (Pty) Ltd and was a member of the Hospitality and General Provident Fund (the respondent).

In and around 1994, the employer created a fund for its employees and stopped paying contributions to the respondent. This resulted in the respondent amending its rules to allow the complainant and other members to remain as paid-up members. Among the benefits that the paid-up members were still entitled to was a housing loan.

In November 1995, Mrs Kunene applied and was granted a housing loan of R8 250 from the respondent. The repayment was to be deducted monthly from the complainant's salary until the debt was extinguished.

Mrs Kunene said that at some stage she approached the respondent to establish the balance of her loan and was informed by the respondent that it was no longer working with the employer and it had for that reason stopped deducting the monthly repayment amount.

She submitted that she was further informed that to be provided with the balance statement she needed to pay R2 600.

She added that after the expiry of seven years without any activity, the respondent approached her employer and started making deductions for the loan repayment without consulting her. She submitted that the employer had indicated to her that it could not stop these deductions.

She was aggrieved by the respondent's continued deductions from her salary and by the fact that the loan was still not extinguished, considering that she had been repaying it for a number of years.

In its response to the OPFA, the respondent said the employer was to deduct the monthly repayment amount from the member's salary and pay it over to the respondent. During 1997 the employer stopped deducting and paying over the repayment amounts to the respondent. To compel the employer it lodged a complaint with the OPFA which was determined in its favour.

The respondent submitted that this determination ordered the employer to start deducting the member's salary every month for the repayment of the loan and members were informed by a notice circulated by the employer dated May 2000.

It further submitted that although some of the members started repaying their loans from then, Mrs Kunene only started her repayment in December 2004 at the rate of R190,52 per month and at that time the loan balance had already grown to R22 938,62 with interest.

The complainant was paying at a rate lower than the interest rate and as a result the loan amount was increasing and as at September 2011 it stood at R31 776,25.

The respondent contended that it was justified in making these deductions in order to settle the housing loan.

In her determination, Ms Lukhaimane said while the respondent was entitled to make deductions to settle the loan, the bone of contention was the amount due and the manner of repayment.

"What the fund has ignored to do in computing the complainant's debt, is the *in duplum* rule.

"The rule provides that interest stops running when the unpaid interest equals the outstanding capital. When due to payment, interest drops below the outstanding capital, interest again begins to run until it once again equals that amount."

The effect of the *in duplum* rule on Mrs Kunene's debt meant that the interest on the debt ought to have been capped at R8 250, meaning that at no time was the total of the debt to exceed R16 500.

"The actions of the respondents to continue charging interest upon interest even after this amount was reached, was illegal.

"In the event, this Tribunal finds that the complainant has been prejudiced by the manner in which the respondents computed the interest on her loan in total ignorance of the *in duplum* rule.

"Therefore, to place the complainant in the position she would have been if the *in duplum* rule had been correctly applied, the respondent needs to determine the point at which the interest on the complainant's loan reached R8 250 and as from that date determine by how much the debt has been reduced by the monthly repayment amount which the complainant continues to pay," said Ms Lukhaimane.

Should the outstanding balance exceed Mrs Kunene's total debt of R16 500, the amount by which it exceeds the total debt must be repaid to the complainant.



From left to right: Phumelele Myokwana, Tando Mbono, Seabi Mokgara, Teboho Tlooko

FAILURE BY EMPLOYER TO PAY PROVIDENT FUND CONTRIBUTIONS

X Mato and 149 Others v the Private Security Sector Provident Fund, Absa Consultants and Actuaries (Pty) Ltd, and Chippa Investment Holdings cc (PFA/WE/8524/2011/TD)

The complainants had been in the employment of the third respondent from 31 December 2007. They were members of the first respondent by virtue of their employment.

Although the third respondent deducted provident fund contributions from the complainants' salary, it did not remit all payments to the first respondent.

The first respondent submitted that the third respondent became its member from 12 August 2005 and was non-compliant in terms of section 13A of the Pension Funds Act. Also the third respondent was in the process of signing an acknowledgment of debt in respect of missing contributions that were due in terms of the Act.

No response was received by the OPFA from the third respondent but an acknowledgment of debt concluded by the third respondent in favour of the first respondent on 22 November 2012 acknowledged that it was indebted to the first respondent in the amount of R6 707 462,26 in respect of outstanding provident fund contributions.

The third respondent undertook to repay the debt as follows: R1 707 462,34 to be paid on 30 November 2012, thereafter, R416 666,66 per month for 12 months, starting from 31 December 2012 until 30 November 2013.

In her determination, the deputy PFA said the acknowledgment of debt signed by the third respondent on 22 November 2012 would be incorporated as an order of this Tribunal.

Should the third respondent fail to comply with the acknowledgment of debt, the whole debt would become due and payable, within six weeks of default thereof.

WITHHOLDING BENEFIT FOLLOWING TERMINATION OF EMPLOYMENT

M Otto v Phumelela Provident Fund, Absa Consultants and Actuaries (Pty) Ltd and Phumelela Gaming And Leisure Ltd (PFA/GA/12384/2012/ZC)

The complainant was an employee of the third respondent from 25 July 1985 until the termination of her employment on 18 April 2012. During this time she was a member of the first respondent.

Following the termination of her employment the complainant failed to receive a withdrawal benefit. She submitted that the third respondent alleged that she stole R500 from it but that this amount was in fact borrowed from it.

The first respondent submitted that it was unaware of the termination of the complainant's employment as it did not receive the complainant's withdrawal claim form.

However, pursuant to the receipt of the complaint, the third respondent advised it that civil proceedings had been instituted against the complainant for the recovery of misappropriated funds. It submitted that the third respondent had sufficient evidence against the complainant and was, therefore, confident of securing a judgment against her.

In the circumstances, it submitted that it had decided to accede to the request of the third respondent to withhold the complainant's benefit pending the outcome of the civil judgment.

It further submitted that it had not acted illegally by withholding the complainant's benefit but did so in terms of section 37D(b) (ii) of the Pension Funds Act. It submitted that the purpose of section 37D was to protect employers' rights to recover losses caused by reason of theft, fraud or misconduct on the part of their employees.

It submitted that it was reasonable to withhold the complainant's full withdrawal benefit as the third respondent had suffered a huge loss as a result of the alleged theft.

The third respondent submitted that the complainant had caused it losses in the sum of R21 000. Civil action had initially been instituted, which was not defended by the complainant. It requested that the complainant's withdrawal benefit in excess of R21 000 should accordingly not be paid.



From left to right: Mfundu Dimbaza, Yolandi Puwani, Pule Motaung, Tumelo Letsoalo

In her determination, the deputy PFA said that as a general rule, section 37A of the Pension Funds Act provided that pension benefits shall not be reducible, transferable or executable. This was intended to protect members' pension benefits.

However, there were exceptions to this principle in certain circumstances. Section 37D(1)(b)(ii) was one of the exceptions to the general rule. It provided that a registered fund may "deduct any amount due by a member to his employer . . . in respect of compensation . . . in respect of any damage caused to the employer by reason of any theft, dishonesty, fraud or misconduct by the member . . ."

The deputy PFA said it is trite law that a pension fund has a discretion to withhold payment of pension benefits pending the outcome of a court case for the recovery of monies misappropriated by reason of theft, dishonesty, fraud or misconduct and allegedly owed by the member to the employer.

She found that the first respondent had acted lawfully in withholding the complainant's entire withdrawal benefit pending the outcome of the civil matter instituted against her. The complaint was dismissed.

FAILURE TO TIMEOUSLY SUBMIT INFORMATION TO THE INSURER

NB Mbatha v Contract Cleaning National Provident Fund, NBC Fund Administration Services (Pty) Ltd and Supercare Services Group (Pty) Ltd (PFA/KZN/41630/2010/MD)

The complainant was in the employ of the third respondent from 22 March 2003 until her services were terminated due to ill-health. The complainant had been a member of the first respondent by virtue of her employment.

Black Sash, an organisation that assisted the complainant in lodging her disability claim, subsequently informed the OPFA that she had since passed away in 2011 and was survived by five children, two of whom are minors.

The complainant submitted that she started suffering from renal failure in October 2006 and as her health condition deteriorated, her services were terminated in July 2007 on medical grounds. She subsequently applied for a disability benefit in September 2007, which was never paid.

The first and second respondents submitted that the complainant became a member of the first respondent on 1 July 2003 and her membership ceased on 31 July 2008.

The complainant's application for a disability benefit was received in July 2007 and further information had been sought by the insurer on 15 November 2007. The insurer's request was forwarded to the third respondent on 25 February 2009.

They further submitted that on 22 June 2009 the insurer sent a reminder to the first respondent advising that if the information it sought had not been provided to it by 20 August 2009, it would close the file.

They submit that, as a result of the failure by the third respondent to furnish the insurer with the information it required, the insurer closed its file and the complainant's claim was repudiated.

They further submitted that as a result of the third respondent's failure to submit the required information, the complainant could only receive her fund credit of R4 053.65, on receipt of a withdrawal notification form, a copy of her identity document and her current banking details.

No response was received by the OPFA from the third respondent.

In her determination, the deputy PFA said the entitlement to and payment of a disability benefit in terms of the first respondent's rules was governed by rule 6.2. The relevant portion of the rule provides that "a member who has retired in terms of Rule 5.2.3 on becoming disabled shall be entitled to a lump sum benefit equal to one times the member's salary at the date of his death; plus the member's fund credit at the date of disablement".

She said according to the available facts, the third respondent ought to have submitted the required information to the insurer on or before 20 August 2009. Therefore, by failing to submit the complainant's disability claim documents on time, the third respondent breached a duty owed by it to the complainant arising out of the first respondent's rules. Thus, it acted wrongfully and unlawfully.

Had the third respondent submitted the complainant's disability claim documents timeously, she would have been considered for a benefit as provided for in rule 6.2.2 supra.

As the complainant has since died, the question of whether the application for a disability benefit was going to be accepted by the first respondent has become moot. Thus, the complainant ought to be placed in the position she would have been had the third respondent submitted all the required and necessary documents pertaining to her disability claim on time.

Summary of important determinations (continued)



From left to right: Lerato Mokoena, Vuyiswa Mangeri, Karabo Masekela, Siphokazi Cetyana

The deputy PFA ordered that in light of the fact that the complainant in this matter has since passed away, any benefit which would have accrued to her would have to be paid into her estate plus interest at the rate of 15% from 1 September 2009 to date of payment.

TERMINATION OF A CHILD'S PENSION BENEFIT

SE Mthembu (on behalf of daughter MM Mthembu) v South African Local Authorities Pension Fund (PFA/ KZN/8742/2011/TN)

The complainant lodged the complaint on behalf of her daughter, MM Mthembu. The complainant and Mr BR Khanyile ("the deceased") were not married at the time of his death. However, they had a child together.

The deceased was employed by Umdoni Municipality ("the employer") and he became a member of the respondent by virtue of his employment. The deceased passed away on 21 April 2002.

Following the deceased's death, the complainant's child became entitled to a death benefit in terms of the rules of the respondent. The complainant received a child's pension in terms of rule 6 of the respondent's rules. The respondent terminated the child pension on 25 March 2011.

Upon investigation, the complainant was advised that she should prove that her daughter was a registered student before the respondent would resume paying her pension.

However, subsequent to that she was advised that her daughter should be registered as a full-time student in order to receive a child's pension beyond the age of 18.

She submitted that she was advised by the respondent that her daughter was registered with the University of South Africa (Unisa), which was a distant learning institution. As a result of her daughter not being a full-time student, the child's pension would be terminated.

The complainant submitted that the respondent had promised to pay the child's pension provided her daughter was below 23 years of age.

The respondent submitted that in terms of rule 6, a child's pension was payable to the complainant on behalf of her daughter until she reached the age of 18. This was only going to be extended

by the trustees until the age of 23 years if she was registered as a full-time student in terms of rule 6.1.2 and a definition of a dependent child.

On 25 March 2011, when the monthly payments were stopped the complainant's daughter was 20 years old. She was two years and five months over the age of 18. It submitted that the deceased's daughter was no longer a dependant in terms of the rules of the respondent.

In her determination, the deputy PFA said the trustees of a fund were bound to do that which was contained in the rules of a fund.

The rules of the respondent defined a dependant child as a child, stepchild or legally adopted child of a member who was unmarried, under the age of 18 years and dependent on the member at the time of the member's death and included a child whom the trustees considered would have been dependent on the member had the member not died.

According to the rules, the age of 18 years may be extended up to 23 years where such child was a full-time student, or indefinitely where such child was, in the opinion of the trustees, permanently incapacitated by reasons of physical or mental infirmity from supporting himself.

The deputy PFA said the meaning of the words in rule 6 as well as those in a definition of a dependant child needed to be interpreted so as to give effect to their ordinary grammatical meaning. The definition of a dependant child referred to a child, under the age of 18 years who was dependent on the member at the time of his death.

However, where the trustees so directed, the age of 18 years may be extended up to the age of 23 years where such a child was a full-time student.

"In light of the first respondent's rules, a child's pension became due and payable following the member's death. This pension was payable until the age of 18 in terms of the rules, unless she was registered as a full-time student.

"The rules of the respondent do not define a full-time student and it is not clear how the board of trustees defined a full-time student in this matter.

"The Paperback Oxford English Dictionary defines full-time as using the whole of a person's available working time. In modern era it is quite difficult to define a full-time student.



From left to right: Sibongile Mbatha, Busisiwe Dhlamini, Khutso Mafokwane, Kgomotso Matsi (seated)

“A definition of a full-time student cannot be limited to a person who attends classes on a daily basis with a tertiary institution anymore. The definition is much wider than that in this day and age where technology is quite advanced and facilitates studying full-time without attending classes on a daily basis.

“Furthermore, the correspondence dated 26 August 2011 from Unisa did not state that the complainant’s daughter is not a full-time student. The correspondence provides that the complainant’s daughter is a registered student and she attends discussion classes to enhance her chances of passing.”

The deputy PFA said it was clear the complainant’s daughter was solely committed to her studies with Unisa. Her lifestyle and commitment could not be distinguished from students who were registered with other tertiary institutions that have regular classes where students may attend if they so wish.

It was ordered that the respondent’s decision to terminate the child’s pension be set aside. The respondent was ordered to reinstate and pay the child’s pension.

FAILURE TO ADVISE OF WITHDRAWING BENEFIT WITHIN SIX MONTHS OF EXIT

M Roolvink v Sonae Provident Fund and Aon South Africa (Pty) Ltd (PFA/KZN/36267/2009/SM)

The complainant was a member of the first respondent until he exited it on 31 August 2007.

The complainant’s gross withdrawal benefit amounted to R441 413,32 as at the date of his exit. His gross benefit was R447 692,41 as at 4 August 2008.

In July 2008, an unclaimed benefit tax in the amount of R179 076,96 was deducted from his benefit and paid to the South African Revenue Services (“SARS”).

An amount of R210 926,13 was paid to the complainant on 11 February 2009 after adjustments were made in respect of the fund’s investment return.

The complainant submitted that the second respondent, as the administrator, had failed to advise him that he had to withdraw his benefit within six months following his date of exit. He contended that an unclaimed benefit tax was deducted from his benefit as a result of the negligence of the second respondent.

Further, the complainant was dissatisfied with the information that was provided to him regarding the value of his benefit, in particular his investment loss. He submitted that the respondents had failed to provide him with an IRP5 detailing his withdrawal benefit, the value of his fund and the amount of tax paid to SARS.

In its initial response, the second respondent confirmed that a gross benefit of R441 413,32 became payable to the complainant upon his exit from the fund on 31 August 2007. It received a signed withdrawal claim form in respect of the complainant in October 2008. The complainant’s benefit amounted to R447 692,41 as at 4 August 2008.

In July 2008 an unclaimed benefit tax of R179 076,96 was deducted and paid to SARS in terms of the Income Tax Act, 58 of 1962 (“the Income Tax Act”).

An IRP5 tax certificate was issued by SARS in respect of the unclaimed benefit tax that was deducted from the complainant’s benefit.

The complainant initially requested that the balance of R268 615,45 should be transferred to a preservation fund with Investec. The transfer of his benefit to Investec took place on 16 January 2009. However, the complainant subsequently requested that his funds should no longer be transferred to Investec.

Investec subsequently returned the amount on 20 January 2009. An amount of R210 926,13 was subsequently paid to the complainant on 11 February 2009. It stated that no tax was deducted from the benefit paid to the complainant.

In terms of the first respondent’s rules, a member’s share of fund was accumulated at an interest rate declared by the trustees based on the returns of the underlying assets of the fund. The market declined from August 2008 until January 2009. The complainant’s member share of the fund was adjusted according to the market performance at the date of payment, which resulted in the reduction of the amount of R268 516,45 in August 2008 to R210 926,13 in January 2009.

In its subsequent response to the OPFA, the second respondent indicated that it had to pay the complainant’s benefit in terms of the Income Tax Act and the tax directive from SARS. SARS imposed unclaimed benefit tax on unclaimed benefits older than six months in terms of Circular GN35.

Summary of important determinations (continued)



From left to right: Nadia Bowers, Dideka Mkele

With regards to information relating to fund values, the second respondent averred that the complainant was provided with benefit statements on an annual basis. The last benefit statement was issued to the complainant for the year ended 31 October 2006.

It provided a schedule reflecting the complainant's benefit build-up on a monthly basis from November 2006 until December 2008. The complainant was also provided with an IRP5 tax certificate relating to the unclaimed benefit tax and an IRP39(a) tax certificate in respect of the benefit paid to him.

The deputy PFA said the complainant exited the first respondent on 31 August 2007. His withdrawal claim form was only received by the second respondent in October 2008. Thus, there was a delay of approximately 15 months before the complainant claimed his benefit.

Section 1 of the Act defines "unclaimed benefit" as any benefit, other than a benefit referred to in paragraph (b), (c) and (d), not paid by the fund to a member within 24 months of the date on which it became legally due and payable.

However, for tax administration purposes a reasonable period to claim a benefit is regarded as a period of up to six months from the date of accrual of the benefit. After this period, the benefit is regarded by SARS as unclaimed.

In terms of the Income Tax Act, a fund or its administrator must apply to SARS for a tax directive when the fund pays or becomes liable to pay the benefit. Put simply, funds and administrators must apply for and deduct a member's tax as and when a benefit accrues or is deemed to accrue to a member.

The submissions indicate that the complainant did not claim his benefit for more than six months since it accrued to him on 31 August 2007. The second respondent applied for a tax directive as required and an amount of R179 076,96 as required in terms of the tax directive from SARS was deducted from his benefit.

Thus, the second respondent acted properly and lawfully in deducting the amount of unclaimed benefit tax from the complainant's benefit.

However, the complainant stated that the second respondent, as the administrator, had negligently failed to advise him that he must claim his benefit within six months following his exit from the fund.

Rule 17.6 of the first respondent's rules essentially provides that if a benefit under the fund, other than a benefit payable in terms of rule 6, is not claimed within three years after the date on which it became due for payment, the benefit shall revert to the fund. This is subject to the proviso that if a potential beneficiary approaches the fund at any stage thereafter, the trustees shall consider his claim and if the circumstances so warrant, shall pay the benefit to the beneficiary together with such interest as they may allow.

However, the provisions of rule 17.6 above are no longer enforceable or applicable as there is a prohibition on unclaimed benefits reverting to the fund, according to Circular 126 issued by the Financial Services Board.

Thus any such benefits must remain in the fund until the member has been traced.

The implication of Circular 126 above is that there should be an attempt to trace the member. Further, an unclaimed benefit cannot revert back to the fund. Any unclaimed benefit should remain in the fund until the member is traced.

In this matter, the respondents acknowledged that there was no attempt to trace the complainant or advise him of the possibility of being charged an unclaimed benefit tax as provided in GN35 issued by SARS.

However, there was an uncontested submission that the complainant was a trustee of the first respondent. He attended a trustee training course where implications of SARS GN35 were discussed. Thus the complainant was reasonably aware of the need to claim a benefit timeously in order to avoid unclaimed benefit tax.

"Thus, the failure of the first respondent to trace the complainant and advise him of the implications of GN35 was mitigated by the fact that the complainant is a person who has full knowledge of the need to claim a benefit within a reasonable time in order to avoid an unclaimed benefit tax."

It was the duty of the complainant to claim his benefit within a reasonable time following the accrual of his benefit. The complainant cannot hold the second respondent liable for any financial loss suffered as a result of the application of the unclaimed benefit tax.



From left to right: Thando Nkala, Tonny Kedikilwe, Gertrude Mothibe, Sylvia Arendse, Given Maswanganye, Dolly Sibanda

With regards to the complainant stating that he was not provided with adequate information regarding the value of his benefit, in particular his investment loss, there was a submission that the complainant was provided with annual benefit statements during his membership of the fund.

The second respondent also provided a schedule of the complainant's contributions, deductions in respect of costs, and the fund's return allocated to his member's share of fund.

The schedule reflected the build-up of the complainant's benefit in the fund until it was paid in February 2009. It appears from the schedule that the complainant's share of the fund was affected by changes in the market during August 2008 until January 2009. The second respondent also provided copies of IRP5 tax certificate and an IT3(a) certificate reflecting the deduction of the unclaimed benefit tax and the amount paid to the complainant.

However, there was a failure to explain in detail the reduction in the complainant's fund value from the date of his exit until the date of payment.

The facts indicated that the complainant's fund value amounted to R441 413,32 as the date of his exit on 31 August 2007. His fund value amounted to R447 692,41 as at August 2008 when the unclaimed benefit tax in the amount of R179 076,96 was deducted. This left an amount of R268 615,45. His fund value was R238 000,00 in October 2008 when he submitted his withdrawal form and he was paid an amount of R210 926,13 in January 2009. The respondents explained the reduction in the fund value was due to the decline in the market during August 2008 until January 2009.

However, the deputy PFA determined, that the complainant should not have been liable for the investment loss between October 2008 until January 2009 as his fund value should have been disinvested in order to protect him against market movements.

"Although there is no duty on the first respondent in terms of its rules to disinvest a member's benefit following receipt of a claim form, the trustees should have exercised this fiduciary duty in the interest of the complainant.

"Further, the respondents did not adequately explain the computation of the amount that was paid to the complainant. This is due to the fact that the complainant paid an unclaimed benefit tax on an amount of R447 692,41, but if one adds the tax amount plus the amount paid to him, it amounts to R389 000,00. The respondents failed to explain what happened to the difference between the amount of R447 692,41 and R389 000,00.

"In terms of rule 7.1 a member is essentially entitled to receive a withdrawal benefit which consists of his share of fund plus fund interest. The respondents failed to show that the amount of R210 926,13 that was paid to the complainant consisted of his share of fund as required."

The deputy PFA ordered that the deduction of investment losses from the complainant's share of fund from October 2008 until January 2009 be declared unreasonable and unjustifiable.

The first respondent was ordered to compute the complainant's share of fund had his share of fund been disinvested from October 2008 until January 2009.

The first respondent was also ordered to compute the complainant's share of fund having regard to the difference between the amounts of R447 692,41 and R389 000,00.

Corporate governance

report 2013

Commitment

The Board is responsible for monitoring standards of sound corporate governance and fully endorses the application of the recommendations of the King Report on Governance (King III). The Board is committed to governance processes that give assurance to stakeholders that the operations of the Office of the Pension Funds Adjudicator (OPFA) are conducted ethically within prudent risk parameters in pursuit of best practice.

To the best of the Board's knowledge, information and belief, the OPFA complied with applicable legislation, policies and procedures, and codes of governance in the financial review period.

Composition of the Board and its role

The Board is the designated accounting authority and governs the OPFA in accordance with the provisions of the Pension Funds Act, No 24 of 1956 (the Act), the Public Finance Management Act, 1999 (PFMA) and good corporate governance principles.

The Board comprises of 11 non-executive Board members from diverse backgrounds appointed by the Minister of Finance with due regard to experience, technical skills, and the interests of users and providers of financial services, including financial intermediaries and the public interest.

The Board remains primarily responsible for the leadership of the OPFA and for strategic direction and policy, operational performance, financial matters, risk management and compliance. The Board of the Financial Services Board (FSB) was, with effect from 1 April 2010, the accounting authority of the OPFA. The Board generally exercises leadership, integrity and judgement in directing the OPFA in a manner based on transparency, accountability and responsibility. The Board is also the focal point

of the corporate governance system within the OPFA. Authority for the day-to-day management of the activities of the OPFA is delegated to the management team (the mandate, role and responsibilities of the Board are set out in the Board Charter).

Delegation of authority

The Board has the authority to lead, control and manage the business of the OPFA. The Board has developed a governance structure of Board committees and has delegated through a comprehensive delegation-of-authority framework some of its authority to the Adjudicator and to MANCO to manage the day-to-day business affairs of the OPFA. The delegation of authority assists decision-making and delivery of strategic objectives without exonerating the Board of its accountability and responsibilities for the OPFA.

Materiality framework

The Board approved a framework of acceptable levels of materiality and significance in accordance with the Public Finance Management Act, 1999 as amended (PFMA).

No instances occurred during the year that needed the required disclosure, in terms of the PFMA and Treasury Regulations, to the National Treasury of certain defined transactions, losses through criminal conduct, or fruitless or wasteful expenditure.

Board meetings

Board meetings are held at least once a quarter and special Board meetings are convened whenever necessary. During the review period, six scheduled Board meetings were held and no extraordinary Board meetings were convened. Details of attendance by each Board member are set out in the table below.

Name of Board member	22/06/2012	28/09/2012	30/11/2012	04/12/2012	25/01/2013	27/03/2013
A Sithole (<i>Chairperson</i>)	A	√	√	√	√	√
H Wilton (<i>Deputy Chairperson</i>)	√	√	√	√	A	A
Z Bassa	A	√	√	√	√	√
F Groepe	n/a	n/a	n/a	n/a	√	√
O Makhubela	A	√	√	√	√	√
J Mogadime	√	√	√	√	√	√
I Momoniat	A	A	A	A	A	A
D Msomi	A	√	√	A	√	√
H Ratshefola	√	√	√	√	√	√
PJ Sutherland	√	√	√	√	√	A
D Turpin	√	√	√	√	√	√

√ Attendance A Apologies n/a Not appointed to the Board



Members of the Board: Standing from left to right – Mr Hamilton Ratshefola, Prof Phillip Sutherland, Mr Abel Sithole (Chairperson), Ms Jabu Mogadime, Mr Olano Makhubela
Seated from left to right – Ms Hilary Wilton (Deputy Chairperson), Ms Zarina Bassa, Ms Dudu Msomi, Ms Diana Turpin
Absent – Mr Ismael Momoniat and Mr Francois Groepe

Board Secretary

All Board members have access to the advice and services of the Board Secretary, who is responsible for ensuring proper governance of the Board. The Board Secretary provides guidance to Board members on their responsibilities within the enabling legislative framework.

Committees of the Board

The Board exercises oversight over the OPFA's operations through a governance structure comprising various subcommittees. The committees are responsible for ensuring that the OPFA complies with, inter alia, relevant legislation, codes of good corporate governance and practices. Each committee has its own terms of reference, which are reviewed annually in line with best practice.

Audit Committee

The committee assists the Board with its responsibility of safeguarding assets, maintaining effective and efficient internal controls, reviewing the financial information and overseeing the preparation of the annual financial statements. The committee meets at least five times a year. Details of attendance of meetings by each committee member are set out in the table that follows.

Name of member	30/04/2012	17/07/2012	10/09/2012	12/11/2012	11/03/2013	19/03/2013
J Mogadime (Chairperson)	√	√	√	√	√	√
D Msomi	√	√	√	√	√	√
PJ Sutherland	√	√	√	√	√	√
H Wilton	A	√	√	√	√	A

√ Attendance A Apologies

Risk Management Committee

The committee's function is to evaluate and advise the Board on the adequacy of risk-management processes and strategies. The committee ensures that identified risks are monitored and appropriate measures are put in place and implemented to manage such risks. The committee meets at least four times a year. Details of attendance of meetings by each committee member are set out in the table that follows.

Name of member	20/03/2012	04/06/2012	03/09/2012	05/11/2012	04/03/2013
H Wilton (Chairperson)	√	√	√	√	A
Z Bassa	√	√	A	√	√
J Mogadime	√	√	√	√	√
H Ratshefola	√	√	√	√	√
D Turpin	√	√	√	√	√

√ Attendance A Apologies

Human Resources Committee

This committee's function is to ensure that the OPFA's human resources strategy and policies are implemented. It meets four times a year. The members of the committee and a record of attendance of meetings during the year are reflected in the table below.

Name of member	05/06/2012	04/09/2012	06/11/2012	05/03/2013
Z Bassa (Chairperson)	√	√	√	√
H Wilton	A	√	√	A
A Sithole	√	√	√	√

√ Attendance A Apologies

Remuneration Committee

The committee ensures that the OPFA's remuneration strategy and policies are implemented. It reviews compensation matters, benchmarks salaries of staff and makes recommendations to the Board, and meets four times a year. The members of the committee and a record of attendance of meetings during the year are reflected in the table below.

Name of member	05/06/2012	04/09/2012	10/10/2012	06/11/2012	05/03/2013
H Wilton (Chairperson)	A	√	√	√	A
A Sithole	√	√	√	√	√
Z Bassa	√	√	√	√	√

√ Attendance A Apologies

Strategic plan and budget

Management of the OPFA prepares the strategic plan and budget of the OPFA for Board consideration and approval. The strategic plan and budget are duly submitted to National Treasury for consideration and approval. Quarterly reports are submitted to National Treasury as per the requirements of the PFMA and Treasury Regulations.



Annual financial statements

for the year ended 31 March 2013



Contents

The reports and statements set out below comprise the annual financial statements presented to the parliament:

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From left to right: Richard Segers, Angie Mojakisane, Wonder Dila, Mamonyoo Ramahlele

Accounting Authority's responsibilities and approval

for the year ended 31 March 2013

The Accounting Authority is required by the Public Finance Management Act (Act 1 of 1999) (as amended by Act 29 of 1999), to maintain adequate accounting records and are responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is their responsibility to ensure that the annual financial statements fairly present the state of affairs of the OPFA as at the end of the financial year and the results of its operations and cash flows for the period then ended, in conformity with South African Statements of Generally Recognised Accounting Practice (GRAP). The external auditors are engaged to express an independent opinion on the annual financial statements and was given unrestricted access to all financial records and related data.

The annual financial statements have been prepared in accordance with South African Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board.

The annual financial statements are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The Accounting Authority acknowledges that it is ultimately responsible for the system of internal financial control established by the OPFA and place high importance on maintaining a strong control environment. To enable the Accounting Authority to meet these responsibilities, the OPFA sets standards for internal control aimed at reducing the risk of error or deficit in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the OPFA and all employees are required to maintain the highest ethical standards in ensuring the OPFA's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the OPFA is on identifying, assessing, managing and monitoring all known forms of risk across the OPFA. While operating risk cannot be fully eliminated, the OPFA endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The Accounting Authority is of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement.

The Accounting Authority believes that the OPFA will be a going concern in the year ahead and has, for this reason, adopted the going concern basis in preparing the financial statements.

The external auditors are responsible for independently reviewing and reporting on the OPFA's annual financial statements. The annual financial statements have been audited by the OPFA's external auditors and their report is presented on page 27.

The annual financial statements set out on pages 29 to 49, which have been prepared on the going concern basis, were approved by the accounting authority on 26 July 2013 and were signed on its behalf by:



Mr AM Sithole
Chairperson



Ms MA Lukhaimane
Deputy Pension Funds Adjudicator

Audit committee report

for the year ended 31 March 2013

We are pleased to present our report for the financial year ended 31 March 2013. The committee is a subcommittee of the Board of the Financial Services Board formed in terms of section 77(c) of the Public Finance Management Act, Act No 1 of 1999 and consists of only non-executive Board members. The committee held six meetings during the reporting period. (Refer to Corporate governance report for listing of its members and meeting attendance.)

The committee meets at least five times per annum as per its approved terms of reference. As the committee is an advisory committee, it does not perform any management functions or assume any management responsibilities. Its role is that of an independent and objective adviser; the committee assists the Board in its responsibility of safeguarding assets and operating control systems and also evaluates and advises the Board on the adequacy of risk management processes and strategies. The committee ensures that identified financial risks are monitored and appropriate measures are put in place and implemented to manage such risks. Members of the OPFA Management, internal auditors and external auditors attend these meetings by invitation.

Audit committee responsibility

The audit committee reports that it has complied with its responsibilities arising from section 51(1)(a) of the Public Finance Management Act, Act No 1 of 1999, as amended.

The audit committee also reports that it has adopted appropriate formal terms of reference, has regulated its affairs in compliance with the terms of reference and has discharged all its responsibilities contained therein.

The effectiveness of internal control

The system of internal controls applied by the OPFA over financial and risk management is effective, efficient and transparent. In line with the PFMA and the King III Report on Corporate Governance requirements, internal audit provides the audit committee and management with assurance that the internal controls are appropriate and effective. This is achieved by means of the risk management process, as well as the identification of corrective actions and suggested enhancements to the controls and processes. From the various reports of the internal auditors, the audit report on the annual financial statements, and the management report of the Auditor-General South Africa, it was noted that no matters were reported that indicate any material deficiencies in the system of internal control or any deviations therefrom. Accordingly, we can report that the system of internal control over financial reporting for the period under review was efficient and effective.

The audit committee is satisfied with the content and quality of quarterly reports prepared and issued by the Accounting Officer of the OPFA during the year under review.

Evaluation of annual financial statements

The audit committee has:

- reviewed and discussed the audited annual financial statements to be included in the annual report, with the Auditor-General and the Accounting Officer;
- reviewed the Auditor-General of South Africa's management report and management's response thereto;
- reviewed changes in accounting policies and practices;
- reviewed the entities compliance with legal and regulatory provisions;
- reviewed adjustments resulting from the audit.

The audit committee concurs with and accepts the Auditor-General of South Africa's report the annual financial statements, and are of the opinion that the audited annual financial statements should be accepted and read together with the report of the Auditor-General of South Africa.

Internal audit

The audit committee is satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the OPFA and its audits. The internal audit function is outsourced to an independent firm on contract renewable annually for three years.

Auditor-General of South Africa

The audit committee has met with the Auditor-General of South Africa to ensure that there are no unresolved issues.



Ms J Mogadime

Chairperson of the audit committee

26 July 2013

Report of the Auditor-General

for the year ended 31 March 2013

REPORT OF THE AUDIT-GENERAL TO PARLIAMENT ON THE OFFICE OF THE PENSION FUNDS ADJUDICATOR

Report on the financial statements

Introduction

I have audited the financial statements of the Office of the Pension Funds Adjudicator set out on pages 29 to 49, which comprise the statement of financial position as at 31 March 2013, the statement of financial performance, statement of changes in net assets and the cash flow statement for the year then ended, the notes, comprising a summary of significant accounting policies and other explanatory information.

Accounting authority's responsibility for the financial statements

The accounting authority is responsible for the preparation and fair presentation of these financial statements in accordance with South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No 1 of 1999) (PFMA) and the requirements of the Financial Advisory and Intermediary Services Act of South Africa, 2002 (Act No 37 of 2002) (FAIS Act), and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor-General's responsibility

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with the Public Audit Act of South Africa, 2004 (Act No 25 of 2004) (PAA), the General Notice issued in terms thereof and International Standards on Auditing. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion

Opinion

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Pension Funds Adjudicator as at 31 March 2013, and its financial performance and cash flows for the year then ended in accordance with SA Standards of GRAP and the requirements of PFMA and the requirements of the FAIS Act.

Report on other legal and regulatory requirements

There in accordance with the PAA and the General Notice issued in terms thereof, we report the following findings relevant to performance against predetermined objectives, compliance with laws and regulations and internal control, but not for the purpose of expressing an opinion.

Predetermined objectives

I performed procedures to obtain evidence about the usefulness and reliability of the information in the annual performance report as set out on pages 51 and 52 of the annual report.

Report of the Auditor-General (continued)

for the year ended 31 March 2013

The reported performance against predetermined objectives was evaluated against the overall criteria of usefulness and reliability. The usefulness of information in the annual performance report relates to whether it is presented in accordance with the National Treasury's annual reporting principles and whether the reported performance is consistent with the planned objectives. The usefulness of information further relates to whether indicators and targets are measurable and relevant as required by the National Treasury Framework for managing programme performance information.

The reliability of the information in respect of the selected objectives is assessed to determine whether it adequately reflects the facts. There were no material findings on the annual performance report concerning the usefulness and reliability of information.

Compliance with laws and regulations

I performed procedures to obtain evidence that the entity has complied with applicable laws and regulations regarding financial matters, financial management and other related matters.

I did not identify any instances of material non-compliance with specific matters in key applicable laws and regulations as set out in the General Notice issued in terms of the PAA.

Internal control

I did not identify any deficiencies in internal control which I considered sufficiently significant for inclusion in this report.

Auditor - General

Pretoria
31 July 2013



Statement of financial position

as at 31 March 2013

	Note(s)	2013 R	2012 R
ASSETS			
Current assets			
Receivables from exchange transactions	6	112 661	70 043
Receivables from non-exchange transactions	5	2 348 911	6 263 900
Prepayments		348 351	–
Cash and cash equivalents	7	1 543 362	5 181 475
		4 353 285	11 515 418
Non-current assets			
Property, plant and equipment	3	8 861 233	2 409 279
Intangible assets	4	1 155 596	534 320
		10 016 829	2 943 599
Total assets		14 370 114	14 459 017
LIABILITIES			
Current liabilities			
Trade and other payables from exchange transactions	8	1 784 210	2 158 289
Provisions	9	1 500 000	–
Total liabilities		3 284 210	2 158 289
Net assets		11 085 904	12 300 728
Net assets			
Accumulated funds		11 085 904	12 300 728

Statement of financial performance

for the year ended 31 March 2013

	Note(s)	2013 R	2012 R
Revenue			
Exchange transactions		215 750	209 260
Non-exchange transactions		40 967 862	37 418 889
	10	41 183 612	37 628 149
Operating expenses			
Auditors remuneration – External	19	(890 854)	(1 570 257)
Auditors remuneration – Internal		(146 275)	(498 906)
Consulting and professional fees		(2 432 154)	(1 204 049)
Depreciation, amortisation and impairments	3 and 4	(1 466 841)	(991 553)
Employee costs		(24 349 935)	(21 157 277)
Foreign exchange loss		–	(1 253)
Legal fees		(1 206 919)	(958 904)
Loss on disposal of assets	3	(198 419)	–
Loss on stolen goods		–	(3 550)
Operating lease rentals		(5 403 354)	(4 965 326)
Other operating expenses		(4 254 927)	(2 547 441)
Relocation costs		(2 048 758)	–
		(42 398 436)	(33 898 516)
(Deficit) surplus for the year		(1 214 824)	3 729 633

Statement of changes in net assets

for the year ended 31 March 2013

	Accumulated funds R	Total net assets R
Balance at 1 April 2011	8 571 095	8 571 095
Changes in net assets		
Surplus for the year	3 729 633	3 729 633
Total changes	3 729 633	3 729 633
Balance at 1 April 2012	12 300 728	12 300 728
Changes in net assets		
Deficit for the year	(1 214 824)	(1 214 824)
Total changes	(1 214 824)	(1 214 824)
Balance at 31 March 2013	11 085 904	11 085 904

Cash flow statement

for the year ended 31 March 2013

	Note(s)	2013 R	2012 R
Cash flows from operating activities			
Receipts			
Finance income		215 750	200 987
Cash received from entities		44 534 662	34 904 007
		44 750 412	35 104 994
Payments			
Cash paid to suppliers and employees		(39 650 034)	(33 825 112)
Net cash flows from operating activities	14	5 100 378	1 279 882
Cash flows from investing activities			
Purchase of property, plant and equipment	3	(7 666 413)	(1 340 377)
Proceeds from sale of property, plant and equipment	3	–	11 332
Purchase of intangible assets	4	(1 072 078)	(622 576)
Net cash flows from investing activities		(8 738 491)	(1 951 621)
Net decrease in cash and cash equivalents		(3 638 113)	(671 739)
Cash and cash equivalents at the beginning of the year		5 181 475	5 853 214
Cash and cash equivalents at the end of the year	7	1 543 362	5 181 475

Statement of comparison of budget and actual amounts

for the year ended 31 March 2013

BUDGET ON CASH BASIS

	Note(s)	Approved budget R	Adjustments R	Final budget R	Actual amounts on comparable basis R	Difference between final budget and actual R
Statement of financial performance						
Revenue						
Revenue from exchange transactions						
Interest received		175 359	–	175 359	215 750	40 391
Revenue from non-exchange transactions						
Transfer revenue						
Contributions from the Financial Services Board		40 967 000	–	40 967 000	40 967 387	387
Donations		–	–	–	475	475
Total revenue from non-exchange transactions		40 967 000	–	40 967 000	40 967 862	862
Total revenue		41 142 359	–	41 142 359	41 183 612	41 253
Expenditure						
Employee costs	22	(25 357 796)	–	(25 357 796)	(24 349 935)	1 007 861
Auditors remuneration – External	22	(1 200 000)	–	(1 200 000)	(890 854)	309 146
Auditors remuneration – Internal	22	(400 000)	–	(400 000)	(146 275)	253 725
Consulting and professional fees	22	(1 799 000)	–	(1 799 000)	(2 432 154)	(633 154)
Depreciation and amortisation		(1 422 000)	–	(1 422 000)	(1 466 841)	(44 841)
Intangible asset acquisitions	22	(49 808)	–	(49 808)	(1 072 078)	(1 022 270)
Legal fees		(1 044 000)	–	(1 044 000)	(1 206 919)	(162 919)
Operating lease rentals	22	(6 000 000)	–	(6 000 000)	(5 739 201)	260 799
Property, plant and equipment acquisitions	22	(3 807 713)	(4 434 000)	(8 241 713)	(7 666 413)	575 300
Other operating expenses		(4 048 535)	–	(4 048 535)	(4 254 927)	(206 392)
Relocation costs	22	(1 325 000)	–	(1 325 000)	(2 048 758)	(723 758)
Total expenditure		(46 453 852)	(4 434 000)	(50 887 852)	(51 274 355)	(386 503)
Deficit		(5 311 493)	(4 434 000)	(9 745 493)	(10 090 743)	(345 250)
Actual amount on comparable basis as presented in the budget and actual comparative statement		(5 311 493)	(4 434 000)	(9 745 493)	(10 090 743)	(345 250)
Reconciliation						
Basis difference						
Acquisition of property, plant and equipment and Intangible assets					8 738 491	
Straight lining of lease rentals					335 847	
Loss on disposal of assets					(198 419)	
Actual amount in the statement of financial performance					(1 214 824)	

Accounting policies

for the year ended 31 March 2013

I. STATEMENT OF COMPLIANCE

The annual financial statements have been prepared in accordance with the South African Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board in accordance with section 55 and 89 of the Public Finance Management Act, Act No 1 of 1999 (as amended by Act 29 of 1999).

Accounting policies for material transactions, events or conditions not covered by the GRAP reporting framework, as detailed above, have been developed in accordance with paragraphs 8, 10 and 11 of GRAP 3 and the hierarchy approved in Directive 5 issued by the Accounting Standards Board.

Basis of preparation and presentation

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention unless specified otherwise. They are presented in South African Rand.

Use of judgements and estimates

A summary of the significant accounting policies, which have been consistently applied, are disclosed below.

These accounting policies are consistent with the previous period.

1.1 Going concern assumption

These annual financial statements have been prepared on the assumption that the OPFA will continue to operate as a going concern for at least the next 12 months.

1.2 Significant judgements and sources of estimation uncertainty

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Estimates and underlying assumptions are reviewed on an ongoing basis. Revision to accounting estimates are recognised in the period in which the estimate is revised and in any future periods affected. Significant judgements include:

Loans and receivables

The OPFA assesses its loans and receivables for impairment at the end of each reporting period. In determining whether an impairment loss should be recorded in the statement of financial performance, the OPFA makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from a financial asset.

The impairment for loans and receivables is calculated on a portfolio basis, based on historical loss ratios, adjusted for national and industry-specific economic conditions and other indicators present at the reporting date that correlate with defaults on the portfolio. These annual loss ratios are applied to loan balances in the portfolio and scaled to the estimated loss emergence period.

Impairment testing for non-financial assets

The recoverable amounts of individual assets have been determined based on the higher of value-in-use calculations and fair values less costs to sell. These calculations require the use of estimates and assumptions.

The OPFA reviews and tests the carrying value of assets when events or changes in circumstances suggest that the carrying amount may not be recoverable. If there are indications that impairment may have occurred, OPFA determines the recoverable amount. The recoverable amount is the higher of fair value less costs to sell and value in use.

Useful lives and residual values

The OPFA reassesses the useful lives and residual values of property, plant and equipment and intangible assets on an annual basis. In reassessing the useful lives and residual values of property, plant and equipment and intangible assets, management considers the condition and the use of the individual assets to determine the remaining period over which the asset can and will be used.

Depreciation

During each financial year, management reviews the assets within property, plant and equipment to assess whether the useful lives and residual values applicable to each asset are appropriate.

1.2 Significant judgements and sources of estimation uncertainty (continued)

Provisions

Provisions were raised and management determined an estimate based on the information available. Additional disclosure of these estimates of provisions are included in note 9 – Provisions.

1.3 Property, plant and equipment

Property, plant and equipment are tangible non-current assets that are held for use in the supply of goods or services, or for administrative purposes, and are expected to be used during more than one period.

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits or service potential associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Property, plant and equipment is initially measured at cost.

The cost of an item of property, plant and equipment is the purchase price and other costs attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Trade discounts and rebates are deducted in arriving at the cost.

Where an asset is acquired through a non-exchange transaction, its cost is its fair value as at date of acquisition.

Where an item of property, plant and equipment is acquired in exchange for a non-monetary asset or monetary assets, or a combination of monetary and non-monetary assets, the asset acquired is initially measured at fair value (the cost). If the acquired item's fair value was not determinable, it's deemed cost is the carrying amount of the asset(s) given up.

When significant components of an item of property, plant and equipment have different useful lives, they are accounted for as separate items (major components) of property, plant and equipment.

Recognition of costs in the carrying amount of an item of property, plant and equipment ceases when the item is in the location and condition necessary for it to be capable of operating in the manner intended by management.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses. Depreciation is recognised in surplus or deficit on the straight line basis over their expected useful lives to their estimated residual values. Assets held under finance leases are depreciated over their expected useful lives on the same basis as owned assets or, where shorter, the term of the relevant lease.

Depreciation commences when the asset is ready for its intended use. The annual depreciation rates are based on the following estimated average asset lives:

Item	Average useful life
Machinery	10 years
Furniture and fixtures	5 to 10 years
Motor vehicles	5 years
Office equipment	3 to 7 years
Computer equipment	3 to 5 years
Leasehold improvements	Lease period
Library books	4 to 8 years
Paintings and sculptures	5 to 10 years

The residual value, and the useful life and depreciation method of each asset are reviewed at the end of each reporting date. If the expectations differ from previous estimates, the change is accounted for as a change in accounting estimate.

Items of entity are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item. Such difference is recognised in the surplus or deficit when the item is derecognised.

Accounting policies (continued)

for the year ended 31 March 2013

I. STATEMENT OF COMPLIANCE (continued)

I.4 Intangible assets

An asset is identified as an intangible asset when it:

- is capable of being separated or divided from an entity and sold, transferred, licensed, rented or exchanged, either individually or together with a related contract, assets or liability; or
- arises from contractual rights or other legal rights, regardless whether those rights are transferable or separate from the entity or from other rights and obligations.

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and
- the cost or fair value of the asset can be measured reliably.

Intangible assets are initially recognised at cost.

Intangible assets are carried at cost less any accumulated amortisation and any impairment losses.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date.

Amortisation is provided to write down the intangible assets, on a straight line basis, to their residual values as follows:

Item	Useful life
Computer software	3 to 5 years

Intangible assets are derecognised:

- on disposal; or
- when no future economic benefits or service potential are expected from its use or disposal.

The gain or loss is the difference between the net disposal proceeds, if any, and the carrying amount. It is recognised in surplus or deficit when the asset is derecognised.

I.5 Financial instruments

Classification

The entity classifies financial assets and financial liabilities into the following categories:

- Loans and receivables
- Financial liabilities measured at amortised cost

Classification depends on the purpose for which the financial instruments were obtained / incurred and takes place at initial recognition. Classification is re-assessed on an annual basis, except for derivatives and financial assets designated as at fair value through surplus or deficit, which shall not be classified out of the fair value through surplus or deficit category.

Initial recognition and measurement

Financial instruments are recognised initially when the OPFA becomes a party to the contractual provisions of the instruments.

The OPFA classifies financial instruments, or their component parts, on initial recognition as a financial asset, a financial liability or an equity instrument in accordance with the substance of the contractual arrangement.

For financial instruments which are not at fair value through surplus or deficit, transaction costs are included in the initial measurement of the instrument.

Regular way purchases of financial assets are accounted for at trade date.

Subsequent measurement

Loans and receivables are subsequently measured at amortised cost, using the effective interest method, less accumulated impairment losses.

Financial liabilities at amortised cost are subsequently measured at amortised cost, using the effective interest method.

Fair value determination

Fair value information for trade and other receivables is determined as the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

Impairment of financial assets

At each end of the reporting period the OPFA assesses all financial assets, to determine whether there is objective evidence that a financial asset or group of financial assets has been impaired.

For amounts due to the entity, significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy and default of payments are all considered indicators of impairment.

Impairment losses are recognised in surplus or deficit

Impairment losses are reversed when an increase in the financial asset's recoverable amount can be related objectively to an event occurring after the impairment was recognised, subject to the restriction that the carrying amount of the financial asset at the date that the impairment is reversed shall not exceed what the carrying amount would have been had the impairment not been recognised.

Receivables from exchange and non-exchange transactions

Trade receivables are measured at initial recognition at fair value plus transaction costs (if any), and are subsequently measured at amortised cost using the effective interest method less impairment losses. Appropriate allowances for estimated irrecoverable amounts are recognised in surplus or deficit when there is objective evidence that the asset is impaired. Significant financial difficulties of the debtor, probability that the debtor will enter bankruptcy or financial reorganisation, and default or delinquency in payments (more than 30 days overdue) are considered indicators that the trade receivable is impaired. The allowance recognised is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the effective interest rate computed at initial recognition.

The carrying amount of the asset is reduced through the use of an allowance account, and the amount of the loss is recognised in the statement of financial performance within operating expenses. When a trade receivable is uncollectable, it is written off against the allowance account for trade receivables. Subsequent recoveries of amounts previously written off are credited against operating expenses in the statement of financial performance.

Trade and other receivables are classified as loans and receivables.

Trade and other payables from exchange transactions

Trade payables are initially measured at fair value less transaction costs (if any), and are subsequently measured at amortised cost, using the effective interest rate method.

Trade payables are classified as financial liabilities at amortised cost.

Cash and cash equivalents

Cash and cash equivalents comprise cash on hand and demand deposits, and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value. These are initially measured at fair value, and subsequently at amortised cost using the effective interest method.

Cash and cash equivalents are classified as loans and receivables.

1.6 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership. Leases in terms of which the entity assumes substantially all risks and rewards of ownership are classified as finance leases. Upon initial recognition the leased asset is measured at an amount equal to the lower of its fair value and the present value of the minimum lease payments. Subsequent to initial recognition, the asset is accounted for in accordance with the accounting policy applicable to that asset.

Operating leases

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability.

1.7 Impairment of non-cash-generating assets

Cash-generating assets are those assets held by the entity with the primary objective of generating a commercial return. When an asset is deployed in a manner consistent with that adopted by a profit-orientated entity, it generates a commercial return.

Non-cash-generating assets are assets other than cash-generating assets.

Accounting policies (continued)

for the year ended 31 March 2013

I. STATEMENT OF COMPLIANCE (continued)

I.9 Provisions and contingencies (continued)

Impairment is a loss in the future economic benefits or service potential of an asset, over and above the systematic recognition of the loss of the asset's future economic benefits or service potential through depreciation (amortisation).

Carrying amount is the amount at which an asset is recognised in the statement of financial position after deducting any accumulated depreciation and accumulated impairment losses thereon.

A cash-generating unit is the smallest identifiable group of assets held with the primary objective of generating a commercial return that generates cash inflows from continuing use that are largely independent of the cash inflows from other assets or groups of assets.

Costs of disposal are incremental costs directly attributable to the disposal of an asset, excluding finance costs and income tax expense.

Depreciation (Amortisation) is the systematic allocation of the depreciable amount of an asset over its useful life.

Fair value less costs to sell is the amount obtainable from the sale of an asset in an arm's length transaction between knowledgeable, willing parties, less the costs of disposal.

Recoverable service amount is the higher of a non-cash-generating asset's fair value less costs to sell and its value in use.

Useful life is either:

- (a) the period of time over which an asset is expected to be used by the entity; or
- (b) the number of production or similar units expected to be obtained from the asset by the entity.

Identification

When the carrying amount of a non-cash-generating asset exceeds its recoverable service amount, it is impaired.

The entity assesses at each reporting date whether there is any indication that a non-cash-generating asset may be impaired. If any such indication exists, the entity estimates the recoverable service amount of the asset.

Irrespective of whether there is any indication of impairment, the entity also test a non-cash-generating intangible asset with an indefinite useful life or a non-cash-generating intangible asset not yet available for use for impairment annually by comparing its carrying amount with its recoverable service amount. This impairment test is performed at the same time every year. If an intangible asset was initially recognised during the current reporting period, that intangible asset was tested for impairment before the end of the current reporting period.

I.8 Employee benefits

Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid vacation leave and sick leave, bonuses, and non-monetary benefits such as medical care), are recognised in the period in which the service is rendered and are not discounted.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs.

The expected cost of bonus payments is recognised as an expense when there is a legal or constructive obligation to make such payments as a result of past performance.

Retirement benefits

OPFA contributes to a retirement annuity fund on behalf of its employees. The retirement fund is a defined contribution plan. The extent of the OPFA's relationship with the retirement annuity fund is purely administrative and contributions paid are expensed.

I.9 Provisions and contingencies

Provisions are recognised when:

- the OPFA has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement is recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation.

Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense.

A provision is used only for expenditures for which the provision was originally recognised.

Provisions are not recognised for future operating losses.

If an entity has a contract that is onerous, the present obligation (net of recoveries) under the contract is recognised and measured as a provision.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note 17.

1.10 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners.

An exchange transaction is one in which the entity receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

Measurement

Revenue is measured at the fair value of the consideration received or receivable, net of trade discounts and volume rebates.

Interest

Revenue arising from the use by others of entity assets yielding interest is recognised when:

- It is probable that the economic benefits or service potential associated with the transaction will flow to the OPFA, and
- The amount of the revenue can be measured reliably.

Interest is recognised, in the statement of financial performance, using the effective interest rate method.

1.11 Revenue from non-exchange transactions

Revenue comprises gross inflows of economic benefits or service potential received and receivable by the OPFA, which represents an increase in net assets.

Control of an asset arises when the entity can use or otherwise benefit from the asset in pursuit of its objectives and can exclude or otherwise regulate the access of others to that benefit.

Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, an entity either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

Transfers are inflows of future economic benefits or service potential from non-exchange transactions, other than taxes.

Accounting policies (continued)

for the year ended 31 March 2013

I. STATEMENT OF COMPLIANCE (continued)

I.11 Revenue from non-exchange transactions (continued)

Recognition

An inflow of resources from a non-exchange transaction recognised as an asset is recognised as revenue, except to the extent that a liability is also recognised in respect of the same inflow.

As the OPFA satisfies a present obligation recognised as a liability in respect of an inflow of resources from a non-exchange transaction recognised as an asset, it reduces the carrying amount of the liability recognised and recognises an amount of revenue equal to that reduction.

Measurement

Revenue from a non-exchange transaction is measured at the amount of the increase in net assets recognised by the OPFA.

When, as a result of a non-exchange transaction, the OPFA recognises an asset, it also recognises revenue equivalent to the amount of the asset measured at its fair value as at the date of acquisition, unless it is also required to recognise a liability. Where a liability is required to be recognised it will be measured as the best estimate of the amount required to settle the obligation at the reporting date, and the amount of the increase in net assets, if any, recognised as revenue.

Transfers

Apart from Services in kind, which are not recognised, the entity recognises an asset in respect of transfers when the transferred resources meet the definition of an asset and satisfy the criteria for recognition as an asset.

The entity recognises an asset in respect of transfers when the transferred resources meet the definition of an asset and satisfy the criteria for recognition as an asset.

Transferred assets are measured at their fair value as at the date of acquisition.

Gifts and donations, including goods in-kind

Gifts and donations, including goods in kind, are recognised as assets and revenue when it is probable that the future economic benefits or service potential will flow to the entity and the fair value of the assets can be measured reliably.

I.12 Translation of foreign currencies

Foreign currency transactions

A foreign currency transaction is recorded, on initial recognition in Rand's which is the OPFA's functional currency, by applying to the foreign currency amount the spot exchange rate between the functional currency and the foreign currency at the date of the transaction.

At each reporting date:

- foreign currency monetary items are translated using the closing rate.

Exchange differences arising on the settlement of monetary items or on translating monetary items at rates different from those at which they were translated on initial recognition during the period or in previous annual financial statements are recognised in the statement of financial performance in the period in which they arise.

I.13 Unauthorised expenditure

Unauthorised expenditure is expenditure that has not been budgeted, expenditure that is not in terms of the conditions of an allocation received from another sphere of government, entity or organ of state and expenditure in the form of a grant that is not permitted in terms of the Public Finance Management Act (Act No 29 of 1999).

All expenditure relating to unauthorised expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

I.14 Fruitless and wasteful expenditure

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

1.15 Irregular expenditure

Irregular expenditure as defined in section 1 of the PFMA (Act) is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including:

- (a) the PFMA; or
- (b) the State Tender Board Act, 1968 (Act No 86 of 1968), or any regulations made in terms of the Act; or
- (c) the OPFA's supply chain management policy.

All expenditure relating to irregular expenditure is recognised as an expense in the statement of financial performance in the period that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

1.16 Budget information

Entity are typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

General purpose financial reporting by entity shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

The approved budget is prepared on a cash basis and presented by economic classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 2012/04/01 to 2013/03/31.

The budget for the economic entity includes all the entities approved budgets under its control.

The annual financial statements are prepared on the accrual basis while the budget is prepared on a cash basis of accounting therefore a comparison and reconciliation with the budgeted amounts for the reporting period have been included in the Statement of comparison of budget and actual amounts and a reconciliation between financial performance and the budgeted cash flows have been detailed in note 23.

1.17 Related parties

The entity operates in an economic sector currently dominated by entities directly or indirectly owned by the South African Government. As a consequence of the constitutional independence of the three spheres of government in South Africa, only entities within the national sphere of government are considered to be related parties.

Management are those persons responsible for planning, directing and controlling the activities of the entity, including those charged with the governance of the entity in accordance with legislation, in instances where they are required to perform such functions.

Close members of the family of a person are considered to be those family members who may be expected to influence, or be influenced by, that management in their dealings with the entity.

Only transactions with related parties not at arm's length or not in the ordinary course of business are disclosed.

Notes to the annual financial statements

for the year ended 31 March 2013

2. NEW STANDARDS AND INTERPRETATIONS

2.1 Standards and interpretations issued, but not yet effective

The entity has not applied the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after 1 April 2013 or later periods:

Standard/Interpretation:	Effective date: Years beginning on or after	Expected impact:
• GRAP 18: Segment Reporting	No effective date	Impact on the financial results and disclosure is considered to be minimal
• GRAP 20: Related Parties	No effective date	Impact on the financial results and disclosure is considered to be minimal

3. PROPERTY, PLANT AND EQUIPMENT

	2013			2012		
	Cost	Accumulated depreciation and accumulated impairment	Carrying value	Cost	Accumulated depreciation and accumulated impairment	Carrying value
Plant and machinery	276 849	(2 307)	274 542	–	–	–
Furniture and fixtures	1 421 401	(75 144)	1 346 257	405 716	(68 608)	337 108
Motor vehicles	195 849	(40 547)	155 302	195 849	(17 377)	178 472
Office equipment	665 042	(273 974)	391 068	690 763	(248 781)	441 982
Computer equipment	1 626 365	(584 171)	1 042 194	1 165 761	(235 076)	930 685
Leasehold improvements	5 435 970	(90 599)	5 345 371	1 324 745	(1 136 289)	188 456
Library books	398 890	(96 069)	302 821	373 812	(45 989)	327 823
Paintings and sculptures	6 081	(2 403)	3 678	6 131	(1 378)	4 753
Total	10 026 447	(1 165 214)	8 861 233	4 162 777	(1 753 498)	2 409 279

Reconciliation of property, plant and equipment – 2013

	Opening balance	Additions	Disposals	Transfers	Depreciation	Total
Plant and machinery	–	276 849	–	–	(2 307)	274 542
Furniture and fixtures	337 108	1 176 515	(93 515)	–	(73 851)	1 346 257
Motor vehicles	178 472	–	–	–	(23 170)	155 302
Office equipment	441 982	150 158	(68 959)	(11 527)	(120 586)	391 068
Computer equipment	930 685	601 841	(35 913)	–	(454 419)	1 042 194
Leasehold improvements	188 456	5 435 971	–	–	(279 056)	5 345 371
Library books	327 823	25 079	–	–	(50 081)	302 821
Paintings and sculptures	4 753	–	(31)	–	(1 044)	3 678
	2 409 279	7 666 413	(198 418)	(11 527)	(1 004 514)	8 861 233

Reconciliation of property, plant and equipment – 2012

	Opening balance	Additions	Disposals	Depreciation	Impairment loss	Total
Furniture and fixtures	194 630	211 086	–	(58 577)	(10 031)	337 108
Motor vehicles	–	195 849	–	(17 377)	–	178 472
Office equipment	478 978	82 308	(8 267)	(109 336)	(1 701)	441 982
Computer equipment	285 028	814 867	(4 028)	(153 502)	(11 680)	930 685
Leasehold improvements	639 620	–	–	(451 164)	–	188 456
Library books	337 544	36 267	–	(45 988)	–	327 823
Paintings and sculptures	6 131	–	–	(1 106)	(272)	4 753
	1 941 931	1 340 377	(12 295)	(837 050)	(23 684)	2 409 279

4. INTANGIBLE ASSETS

	2013			2012		
	Cost	Accumulated amortisation and accumulated impairment	Carrying value	Cost	Accumulated amortisation and accumulated impairment	Carrying value
Computer software	1 762 101	(606 505)	1 155 596	755 419	(221 099)	534 320

	Opening balance	Additions	Transfers	Amortisation	Total
Reconciliation of intangible assets – 2013					
Computer software	534 320	1 072 078	11 527	(462 329)	1 155 596
Reconciliation of intangible assets – 2012					
Computer software	41 598	622 576		(129 854)	534 320

5. RECEIVABLES FROM NON-EXCHANGE TRANSACTIONS

	2013 R	2012 R
Accounts receivable	2 348 911	6 263 900

All accounts receivable are due within 12 months from the statement of financial position date.

Receivables do not contain any items that need to be impaired at year end. The maximum exposure to credit risk at the reporting date is the fair value of each class of receivable mentioned above. The entity does not hold any collateral as security.

6. RECEIVABLES FROM EXCHANGE TRANSACTIONS

	2013 R	2012 R
Other receivables	31 852	43 004
Study assistance	80 809	27 039
	112 661	70 043

All accounts receivable are due within twelve months from the statement of financial position date.

Receivables do not contain any items that need to be impaired at year end. The maximum exposure to credit risk at the reporting date is the fair value of each class of receivable mentioned above. The entity does not hold any collateral as security.

Notes to the annual financial statements (continued)

for the year ended 31 March 2013

7. CASH AND CASH EQUIVALENTS

	2013 R	2012 R
Cash and cash equivalents consist of:		
Cash on hand	2 464	1 366
Cash at bank	1 540 898	5 180 109
	1 543 362	5 181 475

The cash and cash equivalents held by the OPFA may only be used in accordance with its mandate.

Fair value of cash and cash equivalents

The carrying value of cash and cash equivalents as disclosed, approximates the fair values. The maximum exposure to credit risk (refer note 15), as a result of carrying cash and cash equivalents is limited to the carrying value of cash and cash equivalents.

8. TRADE AND OTHER PAYABLES FROM EXCHANGE TRANSACTIONS

	2013 R	2012 R
Trade payables	–	505 988
Leave accrual	1 075 558	940 093
Operating lease accrual	60 376	396 224
Other payables	648 276	315 984
	1 784 210	2 158 289

Trade and other payables principally comprise amounts outstanding for trade purchases and ongoing costs. The average age credit period is less than 30 days. The OPFA considers that the carrying amount of trade and other payables approximates the fair value.

Included in trade and other payables is an accrual for leave pay. Employees entitlement to annual leave is recognised when it accrues to the employee. An accrual is recognised for the estimated liability for annual leave due as a result of services rendered by employees up to reporting date.

9. PROVISIONS

Reconciliation of provisions – 2013

	Opening balance	Additions	Total
Staff relocation provision	–	1 500 000	1 500 000

Staff relocation provision

The staff relocation provision relates to an undertaking to compensate employees for additional costs incurred resulting from the office premises being relocated to Pretoria.

An uncertainty exists in the fact that future outflows are dependent on subsequent resignations or termination of staff with which compensation contracts were entered into. Management has based the provision on the expected number of staff who would enter into the compensation contracts and that no staff would resign or be terminated over the vesting period.

10. REVENUE

	2013 R	2012 R
Exchange transactions	215 750	209 260
Non-exchange transactions	40 967 862	37 418 889
	41 183 612	37 628 149

The amount included in revenue arising from exchanges of goods or services are as follows:

	2013 R	2012 R
Sale of goods	–	273
Miscellaneous other revenue	–	8 000
Interest received – investment	215 750	200 987
	215 750	209 260

The amount included in revenue arising from non-exchange transactions is as follows:

Transfer revenue

	2013 R	2012 R
Contributions from the Financial Services Board	40 967 387	37 418 889
Donations	475	–
	40 967 862	37 418 889

11. EMPLOYEE BENEFIT OBLIGATIONS

Defined contribution plan

It is the policy of the entity to provide retirement benefits to all its employees. The OPFA make use of the Allan Gray Retirement Annuity Fund which are subject to the Pensions Fund Act.

The entity is under no obligation to cover any unfunded benefits.

	2013 R	2012 R
The amount recognised as an expense for defined contribution plans is	2 669 129	2 192 754

12. KEY MANAGEMENT REMUNERATION

Executive management

2013	Salary	Incentive bonus	Leave commutation	Total
M Lukhaimane, Deputy PFA (Appointed 1 June 2012)	1 303 333	130 000	–	1 433 333
Dr EM de la Rey, Acting PFA (Contract expired 30 April 2012)	275 833	–	90 213	366 046
R Maharaj, SAA (Resigned 30 June 2012)	267 654	–	173 621	441 275
Z Camroodien, SAA (Transferred 1 March 2013)	996 172	44 550	–	1 040 722
M Moga, CFO (Resigned 28 February 2013)	704 221	54 000	37 680	795 901
M Ramabulana, SAA (Transferred 1 March 2013)	924 354	59 400	52 396	1 036 150
C Raphadana, SAA (Appointed 1 September 2012)	586 366	–	–	586 366
T Dooka, SAA (Appointed 1 March 2013)	79 735	–	–	79 735
P Mhlambi, HR (Resigned 31 December 2012)	497 870	40 500	30 172	568 542
	5 635 538	328 450	384 082	6 348 070

Notes to the annual financial statements (continued)

for the year ended 31 March 2013

12. KEY MANAGEMENT REMUNERATION (continued)

2012	Salary	Incentive bonus	Leave commutation	Total
Dr EM de la Rey, Acting PFA	1 036 012	250 000	–	1 286 012
R Maharaj, SAA	1 069 931	59 400	93 476	1 222 807
Z Camroodien, SAA	914 738	59 400	–	974 138
M Moga, CFO	634 240	54 000	–	688 240
M Ramabulana, SAA	857 781	59 400	111 638	1 028 819
	4 512 702	482 200	205 114	5 200 016

Employees of the OPFA are paid on a total cost to company basis, where applicable, salaries include retirement fund contributions, medical aid contributions and travel allowances.

PFA – Pension Funds Adjudicator

SAA – Senior Assistant Adjudicator

CFO – Chief Financial Officer

HR – Human Resources

13. TAXATION

The Office of The Pension Funds Adjudicator (OPFA) is exempt from income tax in terms of section 10(1)(cA)(i)(bb) of the Income Tax Act, 1962.

14. CASH GENERATED FROM OPERATIONS

	2013 R	2012 R
(Deficit) surplus	(1 214 824)	3 729 633
Adjustments for:		
Depreciation and amortisation	1 466 841	991 553
Gain on sale of assets and liabilities	198 419	–
Movements in provisions	1 500 000	–
Changes in working capital:		
Receivables from exchange transactions	(42 618)	179 802
Receivables from non-exchange transactions	3 914 989	(2 702 957)
Prepayments	(348 351)	–
Trade and other payables from exchange transactions	(374 078)	(918 149)
	5 100 378	1 279 882

15. RISK MANAGEMENT

In the course of the OPFA's operations it is exposed to credit, liquidity and market risk. The OPFA has developed a comprehensive risk strategy in order to monitor and control these risks. Internal Audit reports quarterly to the Audit and Risk Management Committee, an independent committee that monitors risks and policies implemented to mitigate risk exposures. The risk management process relating to each of these risks is discussed under the headings below.

Credit risk

Credit risk consists mainly of cash and cash equivalents as well as accounts receivable. The OPFA only deposits cash with well established financial institutions approved by National Treasury.

Trade and other receivables consist of monies owed by the Financial Services Board. Credit risk is limited as the OPFA is a regulatory body and levies are charged in terms of legislation.

The OPFA investment policy limits investments to A1 rated banks and the Corporation for public Deposits (CPD). The table below shows the total cash invested with A1 rated banks and CPD. No investment limits were exceeded during the reporting period, and management does not expect any losses from non-performance by these counterparties.

	2013 R	2012 R
Financial institutions		
Standard bank Limited	1 359 918	2 078 621
Corporation for Public Deposits	180 980	3 101 488

Interest rate risk

As the OPFA has no interest-bearing borrowings or significant interest-bearing assets, the OPFA's income and operating cash flows are substantially independent of changes in market interest rates. Should the balances held in cash and cash equivalents remain constant, the entities income would fluctuate R15 409 per annum for every 100 basis point fluctuation in the prime interest rate.

Foreign exchange risk

The OPFA does not hedge foreign exchange fluctuations.

The OPFA reviews its foreign currency exposure, including commitments on an ongoing basis.

Liquidity risk

Prudent liquidity risk management implies maintaining sufficient liquid resources and the ability to settle debts as they become due. In the case of the OPFA, liquid resources consist mainly cash and cash equivalents. The OPFA maintains adequate resources by monitoring rolling cash flow forecasts of the cash and cash equivalents on the basis of expected cash flow.

The table below analyses the OPFA's financial liabilities at year end.

	Less than 1 year	Between 1 and 2 years	Between 2 and 5 years	Over 5 years
At 31 March 2013				
Trade and other payables	2 208 652	–	–	–
At 31 March 2012				
Trade and other payables	1 218 196	–	–	–

16. COMMITMENTS

Operating leases – as lessee (expense)

	2013 R	2012 R
Minimum lease payments due		
– within one year	4 933 226	2 274 083
– in second to fifth year inclusive	19 307 552	–
	24 240 778	2 274 083

Operating lease payments represent rentals payable by the OPFA for its office properties and printers. Leases are negotiated for an average term of three to five years and escalations of 0% to 8% (2012: 10%) have been included in the lease agreement. No contingent rent is payable.

Authorised capital expenditure

Capital expenditure contracted for before or after the reporting date but not yet incurred is as follows:

	2013 R	2012 R
• Property, plant and equipment	–	151 939
• Intangible assets	–	1 067 040
	–	1 218 979

Notes to the annual financial statements (continued)

for the year ended 31 March 2013

17. CONTINGENCIES

Litigation is in the process against the OPFA in the form of a counter claim in regards to a dispute of overpayment made by the OPFA to a supplier. The OPFA's lawyers and management consider the likelihood of the action against the OPFA being successful as unlikely, and the case should be resolved within the next year.

18. RELATED PARTIES

Funds provided from the Financial Services Board in terms of section 30R (1)(a) of the Pension Funds Act 24 of 1956 as amended.

	2013 R	2012 R
Related party balances		
Amounts included in trade receivable regarding related parties		
Financial Services Board	2 348 911	6 263 900
Related party transactions		
Contributions from the Financial Services Board	40 967 387	37 418 889
19. EXTERNAL AUDITORS' REMUNERATION		
Current year – interim fee	4 724	308 489
Prior year audit fees	886 130	1 261 768
	890 854	1 570 257

20. FINANCIAL ASSETS BY CATEGORY

The accounting policies for financial instruments have been applied to the line items below:

2013	Loans and receivables	Total
Receivables from exchange transactions	112 661	112 661
Receivables from non-exchange transactions	2 348 911	2 348 911
Prepayments	348 351	348 351
Cash and cash equivalents	1 543 362	1 543 362
	4 353 285	4 353 285

2012	Loans and receivables	Total
Receivables from exchange transactions	70 043	70 043
Receivables from non-exchange transactions	6 263 900	6 263 900
Cash and cash equivalents	5 181 475	5 181 475
	11 515 418	11 515 418

21. FINANCIAL LIABILITIES BY CATEGORY

The accounting policies for financial instruments have been applied to the line items below:

2013	Other financial liabilities	Total
Trade and other payables	3 284 210	3 284 210

2012	Other financial liabilities	Total
Trade and other payables	2 158 289	2 158 289

22. BUDGET DIFFERENCES

Material differences between budget and actual amounts

Statement of financial performance

Employee costs

The shortfall of actual expenditure over the final budget by 4% was a result of vacant senior positions during the period.

Auditor remuneration external and internal

The shortfall is a result of the interim and certain internal audits being postponed over the period of the OPFA office relocation. These cost are expected to be incurred in the next financial year.

Consulting and professional fees

Included in the professional fees are the fees paid to conciliators, actuarial fees, business continuity, change management consultant and workflow specialists fees. The overspend on professional fees for the year to date is as a result of the Stakeholder survey undertaken during the year; one consultant to assist with the backlog of complaints and additional conciliations held than initially budgeted.

Intangible assets acquisitions

The overspend was due to a capital commitment contracted and budgeted for in the prior year in regards to a new Case Management System. (Refer note 16.)

Operating lease rentals

The shortfall relates to a savings on office premises rentals derived from the relocation of the OPFA office to Pretoria.

Property, plant and equipment

The shortfall relates to leasehold premises improvements and office furniture being acquired at favourable rates.

Relocation costs

During the year the OPFA relocated it's offices from Sandton, Johannesburg to Menlyn, Pretoria. The overspend arises from costs earmarked for staff relocation. The budget was based on fewer staff being affected by the relocation and that the related costs per a staff member being less than what was incurred.

23. RECONCILIATION BETWEEN BUDGETED AND ACTUAL CASH FLOWS

	Operating activities	Financing activities	Investing activities	Total
Actual amount on comparable basis as presented in the budget and actual comparative statement	(1 453 972)	–	(8 291 521)	(9 745 493)
Timing differences	–	–	(446 970)	(446 970)
Basis differences	6 554 350	–	–	6 554 350
Actual amount in the cash flow statement	5 100 378	–	(8 738 491)	(3 638 113)

Statement of responsibility

for performance information for the year ended 31 March 2013

The Deputy Pension Funds Adjudicator is responsible for the preparation of the public entity's performance information and for the judgements made in this information.

The Deputy Pension Funds Adjudicator is responsible for establishing, and implementing a system of internal control designed to provide reasonable assurance as to the integrity and reliability of performance information.

In my opinion, the performance information fairly reflects the actual achievements against planned objectives, indicators and targets as per the strategic and annual performance plan of the public entity for the financial year ended 31 March 2013.

The Office of the Pension Funds Adjudicator performance information for the year ended 31 March 2013 has been examined by the external auditors and their report is presented on pages 27 and 28 of the annual financial statements.

The performance information of the entity set out on pages 51 and 52 was approved by the board on 26 July 2013.



Mr AM Sithole
Chairperson



Ms MA Lukhaimane
Deputy Pension Funds Adjudicator

Performance information

for the year ended 31 March 2013

Strategic objective	Measurable objective	Measurable indicator	Strategic plan target	Estimated performance 2012/2013	Performance results 31 March 2013	Comments
1. Dispose of complaints received	To dispose of 380 complaints per month by the Adjudication teams through signature by the delegated official in accordance with applicable law.	1.1 To dispose of 190 complaints per month by the new complaints team;	380 complaints per month	190 per month	93% achieved. 4 127 determinations were signed, 93 settlements completed by the Adjudication teams	In order to improve efficiencies and save costs, matters that would otherwise have been determined were closed administratively as out of jurisdiction or settlements
		1.2 To dispose of 190 complaints per month by the backlog team;		190 per month		
	Percentage of determinations taken on review to the High Court	1.3 1% of determinations signed off;	Maximum of 39 cases taken on review per annum	Maximum of 39 cases taken on review for the year	Achieved	Only 23 new applications were received over the period
	To allocate and resolve complaints received by the OPFA	1.4 Complaints resolved under out of jurisdiction, settlements, reformulations, conciliation and allocated;	Number of files resolved or allocated within the required timelines	Not applicable	Achieved, 630 matters finalised through conciliation and 3 292 closed as reformulations, settlements and out of jurisdiction	Continuous monitoring of adherence to workflow to ensure that matters are attended to at the earliest possible time
		1.5 Administration of case management and adherence to the required timelines.	Compliance, monitoring and review of cases within set timelines	Not applicable	Achieved, New case management system implemented with effect from 1 October 2012	Continuous monitoring of adherence to workflow
2. Achieve Operational Excellence	To comply with the requirements of the PFMA, Treasury regulations and other financial frameworks	2.1 Audit opinion	Unqualified audit opinion on the Annual Financial Statements	Unqualified audit opinion of the Annual financial Statements	Achieved	Notice of withdrawal of a court matter where there is a counterclaim against the OPFA has been filed with the Randburg Magistrate Court after attempts to settle did not bear fruit
	To establish a proper Supply Chain Management system	2.2 Number of audit findings raised by AG/IA on SCM	Unqualified audit opinion	Unqualified audit opinion on SCM	Achieved	
	To ensure that appropriate talent is recruited, developed and retained to support the execution of the PFA's mandate by developing and implementing recruitment, training and retention strategies	2.3 Recruitment of appropriate staff as and when required	Refer to strategic plan	All posts filled within 2 months	Achieved	All critical posts filled within two months – due to the efficiencies with the workflow, and the progress with the backlog, some positions have not been filled in order to have sufficient time to assess impact

Performance information (continued)

for the year ended 31 March 2013

Strategic objective	Measurable objective	Measurable indicator	Strategic plan target	Estimated performance 2012/2013	Performance results 31 March 2013	Comments
		2.4 An approved training strategy and plan	Refer to strategic plan	Strategy and plan updated and approved by 31 March 2013	Partially achieved	PDP's compiled, training needs finalised
		2.5 Wellness programme implemented as per plan	Refer to strategic plan	100 percent	Achieved	All undertakings as per wellness plan carried out. Most initiatives were aimed at assisting employees to deal with the relocation and increased work demand
		2.6 Implementation of performance management initiatives	Refer to strategic plan	100% of performance management initiatives	Performance management initiatives established for all staff.	Performance agreements completed on time, reviewed to be in line with the job requirements and measurable. All employees completed personal development plans
	To maintain and align ICT systems to support business needs and overall objectives of the OPFA	2.7 An approved ICT strategy and implementation plan	Refer to strategic plan	ICT strategy and plan approved by 31 March 2013	Achieved, ICT Plan approved	Due to the review of the status of ICT, it was decided that at this stage an ICT plan would be sufficient
	Compliance to applicable legislation and governance frameworks	2.8 Number of compliance reports submitted	Refer to strategic plan	4 compliance reports	Achieved	
3. Effective Stakeholder Relationship	To collaborate and build relationships with stakeholders	3.1 An approved stakeholder relationship strategy	Honour invitations, feedback from stakeholders and collaboration with regulatory bodies	Honour invitations, feedback from stakeholders and collaboration with regulatory bodies	Achieved, all invitations to the office were honoured and requests for assistance from funds and administrators were honoured	Stakeholder survey to be submitted during the first quarter round of Board meetings for 2013/14





South Africa's fifth Pension Funds Adjudicator, Muvhango Lukhaimane, aims to improve governance and ensure compliance

MUVHANGO LUKHAIMANE

Pension Fund Adjudicator

B Juris (Univen) LLB (UP) LLM (Unisa) MBA (Wits)

“There is need to enhance the credibility and integrity of the pension funds industry, especially in light of the prevailing perception around the behaviour of other participants within financial services.”

“Trustees must have the relevant education, experience and skills to make investment decisions consistent with the best interest of the pension fund members and their beneficiaries.”

Muvhango Antoinette Lukhaimane is South Africa's fifth Pension Funds Adjudicator.

In making the announcement, Finance Minister Pravin Gordhan said Ms Lukhaimane's appointment took effect on 1 July 2013.

She has served as deputy Pension Funds Adjudicator since 1 June 2012, during which time she kept her promise to reduce the backlog of complaints going as far back as 2007.

Also, despite the operational challenges occasioned by the recent relocation of the OPFA to new offices in Pretoria, 22% more new complaints were resolved in the year to 31 March 2013 than during the previous year.

Ms Lukhaimane who possesses a wealth of experience as a seasoned lawyer, and has been employed within the pension funds industry and in human resources, sees her latest appointment as Pension Funds Adjudicator as a pulling together of her skills acquired throughout her working life.

After matric, she decided to embark on a career in law and obtained a B Juris degree from the University of Venda. This was followed by an LLB degree from the University of Pretoria.

Through part-time studies she obtained the Master of Laws degree, with emphasis on human rights law, constitutional interpretation, labour law and medical jurisprudence.

Ms Lukhaimane also obtained a Postgraduate Diploma in Financial Planning from the University of Free State.

She recently completed the MBA through Wits Business School.

Her first job was at the University of Venda from January 1995 to January 2000 as a law lecturer. She then took a job as research consultant at Sanlam Employee Benefits in Cape Town and was legal advisor at the same office from May 2001 to June 2002.

From July 2002 to June 2003, she was legal consultant at Liberty Personal Benefits in Cape Town.

From July 2003 to March 2005, Ms Lukhaimane was Principal Officer of the Eskom Pension and Provident Fund.

From April 2005 to May 2007, she was general manager: research at the State Security Agency in Pretoria and moved within the agency to hold the position of general manager: human resources from June 2007 to May 2011.

From June 2011 to May 2012 she was chairperson: intelligence services council at the Ministry of State Security Pretoria.

Her scope of duties included preparing, leading and executing the Strategic Plan of the Council, advising and making recommendations to the Minister on the development of policies on human resources and conditions of service and advising and making recommendations to the Directors-General on alignment and compliance of all human resources and conditions of service.

Commenting on her new appointment, Ms Lukhaimane said as head of the Office of the Pension Funds Adjudicator, she will work harder at improving stakeholder interaction so that the dispute resolution forum became more visible to the public.

"There is need to enhance the credibility and integrity of the pension funds industry, especially in light of the prevailing perception around the behaviour of other participants within financial services.

"With the increased participation of labour organisations in the pension funds industry, efforts will be undertaken to engage with this very important stakeholder."

She said pension funds played an important role in the national economy.

"By regulating them appropriately, the elderly can be protected against poverty, investment can be facilitated and systemic risk reduced."

"There is need for effective and regular education for actual and possible pension fund participants and retirement annuity fund holders regarding the need to save, planning for retirement and investing and financial literacy in general.

"This can counteract poor financial decisions by members. This education, however, must start with children at home and in schools."

Ms Lukhaimane said trustees played a key role in the governance of pension funds. Hence trustees must have the relevant education, experience and skills to make investment decisions consistent with the best interest of the pension fund and its beneficiaries.

To this end, Government was considering making it a statutory requirement that trustees be fit and proper with certain minimum qualifications, which should be achieved within a fixed period from the date of appointment.

Advocate Dube Tshidi, Executive Officer of the Financial Services Board, said Ms Lukhaimane's appointment would only help take the Office of the Pension Funds Adjudicator to greater heights, given her impressive career credentials.

"The fact that she is a seasoned lawyer, and an experienced industry player means that she will bring real value to the pensions industry," he said.

When she needs to relax after poring through files of complaints from aggrieved fund members, Ms Lukhaimane regularly attends spinning classes at the gym, watches sports on television, and enjoys reading.

Administration

Country of incorporation and domicile	South Africa
Registered office	Block A; 4th Floor, Riverwalk Office Park 41 Matroosberg Road Ashlea Gardens, Pretoria, 0081
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